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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 77

HANNAH M. SMITH, ADMINISTRATRIX OF ESTATE OF OWEN P. SMITH, DECEASED, PETITIONER,

vs.

MAGIC CITY KENNEL CLUB, INC., AND JOHN J. SHAUGHNESSY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 11, 1930

CERTIORARI GRANTED MAY 19, 1930

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(34,940)

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[fols. a & b] [Captions omitted]

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF OKLAHOMA

[fol. 1]

In Equity. No. 271

HANNAH M. SMITH, ADMINISTRATRIX OF THE ESTATE OF OWEN P. SMITH, Plaintiff,

vs.

MAGIC CITY KENNEL CLUB, INCORPORATED, JOHN SHAUGHNESSY, GEORGE HURFORD, JOHN J. O'BRIEN, J. W. COLLEY, Defendants

[fol. 2] BILL OF COMPLAINT—Filed Sept 16, 1927

To the Honorable the Judge of the United States District Court for the Northern District of Oklahoma:

The plaintiff for cause of action herein, alleges as follows:

I

Plaintiff says that she is the widow of Owen P. Smith, deceased; that she is a resident of the County of Dade, and State of Florida, and a citizen of the United States and of said State of Florida; that the said Owen P. Smith died intestate on, to-wit: January 15, 1927—in the City of Miami, County of Dade and State of Florida, of which said County and said State Owen P. Smith was a resident and a citizen; that administration proceedings were duly and regularly filed with reference to the estate of said Owen P. Smith in the County Court in and for the County of Dade, State of Florida; that she, the plaintiff, was by said court duly appointed administratrix of the estate of said Owen P. Smith and immediately thereafter qualified as such administratrix, and has been acting as such from thence until now, and is now so acting, and as such administratrix of the estate of said Owen P. Smith, that she brings this, her bill of complaint, against the Magic City Kennel Club, a corporation of Oklahoma, and John Shaughnessy, George Hur-

ford, John J. O'Brien, and J. W. Colley, citizens and/or residents of the State of Oklahoma, each and all of whom have a regular and established place of business in the County of Tulsa, and the State of Oklahoma, or are citizens or residents of said City of Tulsa and State of Oklahoma, and in the Northern District of Oklahoma, in which District the acts of patent infringement of said several defendants, hereinafter complained of, have been and are now being committed.

II

That the Magic City Kennel Club is a corporation organized and existing under and by virtue of the laws of the State of Oklahoma is domiciled and has a regular and established place of business in the County of Tulsa and State of Oklahoma and is an inhabitant and resident of the said County of Tulsa, and State of Oklahoma, and is a citizen of the State of Oklahoma.

III

That John Shaughnessy, George H. Hurford, John J. O'Brien and J. W. Colley are inhabitants and/or citizens of the City of Tulsa, in the State of Oklahoma, and that they and each of them have a regular and established place of [fol. 3] business at and with the said Magic City Kennel Club or elsewhere in the County of Tulsa, and in said State of Oklahoma.

IV

That the above named individual defendants are and have been conducting and operating a dog racing enterprise near the City of Tulsa, in the County of Tulsa, State of Oklahoma, and have a regular and established place of business in or near the said City of Tulsa and near a public highway in and about said County of Tulsa and State of Oklahoma for the purpose of carrying on said dog racing enterprise under the name of the "Magic City Kennel Club."

V

That this is a suit under the patent laws of the United States and is predicated upon the infringement by the defendants, and/or each of them, of a number of letters patent of the United States issued to said Owen P. Smith, the acts of infringement being committed near the City of Tulsa,

County of Tulsa and State of Oklahoma, and elsewhere in the United States.

VI

Plaintiff is now the owner of letters patent of the United States, numbered 1,379,224, issued to said Owen P. Smith on May 24th, 1921, entitled Dog Racing Amusements, and of all the rights, title and interest therein and thereunder; that prior to the date of the application on which said patent was granted, said Owen P. Smith was the first, sole, and original inventor of the new and useful improvements in dog racing amusements set forth in said patent, and applied to the said Commissioner of Patents in due form of law for a United States Patent thereon, whereupon due proceedings were had and said letters of patent were granted in the name of the United States of America to said Owen P. Smith, signed, sealed, and executed in due form of law, whereby there was secured to said Owen P. Smith, his heirs, executors, administrators, and assigns, the exclusive right to make, use and vend said invention for seventeen years in the United States and the territories thereof, from and after the grant of said letters patent, a certified copy of which letters patent the plaintiff is here ready in court to produce. A printed copy of the specifications, claims, and drawings of said patent is attached hereto as "Exhibit A." The said invention or improvement of said Owen P. Smith, as set forth in said patent, and as set forth in the application upon which said patent was granted, was not known or used in this country before his invention thereof or patented or described in any [fol. 4] printed publication anywhere before his invention thereof, or for more than two years before his said application, or in public use or on sale in this country for more than two years before his said application, or patented in any foreign country by and/or by his legal representatives or assigns on any application by them more than twelve months before his said application for patent in this country, and was not abandoned. The devices embodying the teachings of said patent made, used or sold by said Owen P. Smith and said plaintiff, have been marked patented, or with a suitable abbreviation thereof, together with the date of said patent.

VII

Plaintiff is now the owner of letters patent of the United States, numbered 1,507,439, issued to said Owen P. Smith on

September 2, 1924, entitled "Starting Cage for Racing Dogs," and of all the rights, title and interest therein and thereunder; that prior to the date of the application on which said patent was granted, said Owen P. Smith was the first, sole, and original inventor of the new and useful improvements in Starting Cage for Racing Dogs set forth in said patent, and applied to the Commissioner of Patents in due form of law for a United States Patent thereon, whereupon due proceedings were had and said letters of patent were granted in the name of the United States of America to said Owen P. Smith, signed, sealed, and executed in due form of law, whereby there was secured to said Owen P. Smith, his heirs, executors, administrators, and assigns, the exclusive right to make, use and vend said invention for seventeen years in the United States and the territories thereof, from and after the grant of said letters patent, a certified copy of which letters patent the plaintiff is here ready in court to produce: A printed copy of the specifications, claims and drawings of said patent is attached hereto as Exhibit B. The said invention or improvement of said Owen P. Smith, as set forth in said patent, and as set forth in the application upon which said patent was granted, was not known or used in this country before his invention thereof or patented or described in any printed publication anywhere before his invention thereof, or for more than two years before his said application, or in public use or on sale in this country for more than two years before his said application, or patented in any foreign country by and or by his legal representatives or assigns on any application by them more than twelve months before his said application for patent in this country and was never abandoned. The devices embodying the teachings of said patent made, used and or sold by said Owen P. Smith and said plaintiff, have been marked patented, or with a suit-[fol. 5] able abbreviation thereof, together with the date of said patent.

VIII

Plaintiff is now the owner of letters patent of the United States, numbered 1,507,440, issued to said Owen P. Smith on September 2, 1924, entitled "Housing for Conveyor Cars and Tracks," and of all the rights, title and interest therein and thereunder; that prior to the date of the application

on which the said patent wad granted, said Owen P. Smith was the first, sole and original inventor of the new and useful improvements in housing for conveyor cars and tracks set forth in said patent, and applied to the Commissioner of Patents in due form of law for a United States patent thereon, whereupon due proceedings were had and said letters patent were granted in the name of the United States of America to said Owen P. Smith, signed, sealed, and executed in due form of law, whereby there was secured to said Owen P. Smith, his heirs, executors, administrators, and assigns, the exclusive right to make, use and vend said invention for seventeen years in the United States and the territories thereof, from and after the grant of said letters patent, a certified copy of which letters patent the plaintiff is here ready in court to produce. A printed copy of the specifications, claims, and drawings of said patent is attached hereto as Exhibit C. The said invention or improvement of said Owen P. Smith, as set forth in said patent, and as set forth in the application upon which said patent was granted, was not known or used in this country before his invention thereof or patented or described in any printed publication anywhere before his invention thereof, or for more than two years before his application, or in public use or on sale in this country for more than two years before his said application, or patented in any foreign country by and or by his legal representatives or assigns on any application by them more than twelve months before his said application for patent in this country and was never abandoned. The devices embodying the teachings of said patent made, used and or sold by said Owen P. Smith and said plaintiff, have been marked patented, or with a suitable abbreviation thereof, together with the date of said patent.

IX

Plaintiff is now the owner of letters patent of the United States, numbered 1,630,811, issued to said Owen P. Smith on May 31, 1927, entitled "Starting Cage for Dog racing and the like, and of all the rights, title and interest there-[fol. 6] in and thereunder; that prior to the date of the application on which said patent was granted, said Owen P. Smith was the first, sole and original inventor of the new and useful improvements in starting cage for dog racing

and the like set forth in said patent, and applied to the Commissioner of Patents in due for- of law for a United States patent thereon, whereupon due proceedings were had and said letters of patent were granted in the name of the United States of America to said Owen P. Smith, his heirs, executors, administrators, and assigns, the exclusive right to make, use and vend, said invention for seventeen years in the United States and the territories thereof, from and after the grant of said letters patent, a certified copy of which letters patent the plaintiff is here in court ready to produce. A printed copy of the specification, claims and drawings of said patent is attached hereto as Exhibit D. The said invention or improvement of said Owen P. Smith, as set forth in said patent, and as set forth in the application upon which said patent was granted, was not known or used in this country before his invention thereof or patented or described in any printed publication anywhere before his invention thereof, or for more than two years before his said application, or in public use or on sale in this country for more than two years before his application, or patented in any foreign country by and or by his legal representatives or assigns or any application made by them more than twelve months before his said application for patent in this country, and was never abandoned. The devices embodying the teachings of said patent made, used and or sold by said Owen P. Smith and said plaintiff, have been marked patented, or with a suitable abbreviation thereof, together with the date of said patent.

X

Plaintiff is now the owner of letters patent of the United States, numbered 1,630,812, issued to said Owen P. Smith on May 31, 1927, entitled "Traction Car and the Like", and all of the rights, title and interest therein and thereunder; that prior to the date of the application on which said patent was granted, said Owen P. Smith was the first, sole and original inventor of the new and useful improvements in traction cars and the like set forth in said patent, and applied to the Commissioner of Patents in due form of law for a United States patent thereon, whereupon due proceedings were had and said letters of patent were granted in the name of the United States of America to said Owen

P. Smith, his heirs, executors, administrators, and assigns, the exclusive right to make, use and vend said invention for [fol. 7] seventeen years in the United States and the territories thereof, from and after the grant of said letters patent, a certified copy of which letters patent the plaintiff is here ready in court to produce. A printed copy of the specification, claims and drawings of said patent is attached hereto as Exhibit E. The said invention or improvement of said Owen P. Smith, as set forth in said patent, and as set forth in the application upon which said patent was granted, was not known or used in this country before his invention thereof or patented or described in any printed publication anywhere before his invention thereof, or for more than two years before his said application, or in public use or on sale in this country for more than two years before his application, or patented in any foreign country by and or by his legal representatives or assigns or any application by them more than twelve months before his said application for patent in this country, and his said invention was never abandoned. The devices embodying the teachings of said patent made, used and or sold by said Owen P. Smith and said plaintiff, have been marked patented, or with a suitable abbreviation thereof, together with the date of said patent.

XI

The said inventions or improvements described and claimed in said letters patent are capable of conjoint use as well as separate use, and have been used conjointly and separately by said Owen P. Smith and by the plaintiff in various parts of the United States, and have been and are being used conjointly and separately by the defendant Magic City Kennel Club, and by the other individual defendants, cooperating with and aiding and abetting said Magic City Kennel Club and are being unauthorizedly used near the City of Tulsa, County of Tulsa, and State of Oklahoma, aforesaid since, to-wit, . 1927, and without license from plaintiff or said Owen P. Smith, or other right.

XII

The defendant, Magic City Kennel Club, well knowing said plaintiff rights in the premises and without license

or right thereto, has been and is engaged in the business of conducting a certain amusement enterprise near the City of Tulsa, County of Tulsa, and State of Oklahoma, aforesaid, in which dogs race over a course, in pursuit of a lure, for instance, in the form of a rabbit, which is caused to travel on said course in advance of the dogs, exciting the dogs to strenuous efforts at running, and in said business and enterprise said Magic City Kennel Club and [fol. 8] said individual defendants, have made or caused to be made, certain apparatuses and devices embodying the subject matter and the claims of said several letters patent herein listed, and having used and caused to be used said apparatuses and devices in the district aforesaid, for public entertainment and at cost and expense to the public, such as admission fees, and with great profit to the defendants, and each of them, and said defendants have thereby infringed the patents to said Owen P. Smith herein described, and each thereof, and is continuing to infringe said letters patent and each thereof in its said practice and enterprise, and threaten to continue said infringements, and said infringements have damaged the plaintiff and have resulted in profits to the defendants, and each of them, which rightfully belong to the plaintiff.

XIII

That for several years past and particularly from the month of February, 1921, and up to the present time, said Owen P. Smith and the plaintiff, the immediate representative of the said Owen P. Smith estate, have made, used and sold the invention or inventions covered by the letters patent Nos. 1,379,224, 1,507,439, 1,507,440; and that prior to the autumn of the year 1925, no person other than the said Owen P. Smith, or his representatives and licensees had assumed to make or sell the said inventions or devices embodying said inventions or any of them. That for several years, and prior to the autumn of the year 1925, all persons, other than the said Owen P. Smith, and his authorized agents or licensees, refrained from using or selling the invention or inventions covered by said several letters patent, for the reason of the existence of said several letters patent, and of the application for letters patent which have since the year 1925 matured into letters patent, although

it would have been to the interest of third persons to adopt and employ such inventions. That during the period from the grant of said letters patent and each of them there has been a general public acquiescence in their novelty and validity; and that said Owen P. Smith and his associates, agents or licensees have spent great sums of money in carrying on the inventions covered by said letters patent, and introducing the said inventions into gainful use, and that said use by said Owen P. Smith had been exclusive, and without question on the part of the public, from the year 1921 until the fall of the year 1925.

XIV

That the defendant, John Shaughnessy, was for some time prior to the year 1927, actively engaged with or in the [fol. 9] association with the said Owen P. Smith in the operation of race tracks for the racing of grey hounds, and that during his employment by or the association with said Owen P. Smith, he actively participated in the exploitation of the said inventions of the said Owen P. Smith, and the said Shaughnessy, lauded and proclaimed the novelty and importance of the said several inventions all of which were covered by patents at that time or by letters patent issued since such employment or association of said Shaughnessy, by or with said Smith had ceased, and assisted and was instrumental in bringing to the attention of the public the value and utility as well as the fact that the said Owen P. Smith was the exclusive owner of the valuable right to make, use and sell the several said inventions; that after leaving the employ of or association with said Owen P. Smith, the said Shaughnessy in the early part of the year 1927 and after the death of said Smith, entered into a wrongful conspiracy with the defendants, the Magic City Kennel Club and the individual defendants herein named, and others who are unknown to the plaintiff, to commit and cause to be committed the aforesaid unlawful making, using, selling or leasing of apparatus embodying the inventions of the several aforesaid letters patent to Owen P. Smith; that in pursuance of said conspiracy the said defendants, John Shaughnessy, and others, instigated and initiated the aforesaid making, using and selling of the said apparatus for their own profit, benefit and/or

advantage, and in carrying out said conspiracy, incorporated or caused to be incorporated the defendant, Magic City Kennel Club, in an attempt to carry on the aforesaid making, using, selling or leasing said apparatus or causing the same to be carried on without subjecting them, or either of them, to personal liability therefor, and for this purpose, and by some means unknown to plaintiff, said individual obtained and secured the ownership or control of and the power to control and operating the defendant, Magic City Kennel Club, and has since about the 1st of September, 1927, now operate the said defendant, Magic City Kennel Club, and have continued to direct and control said Magic City Kennel Club during the period since about September 1, 1927, controlling through the said Magic City Kennel Club the aforesaid making, using, selling or leasing of the said infringing apparatus for their own benefit, profit and advantage, using and employing the defendant, Magic City Kennel Club, as a cloak or shield therefor.

XV

That a decree against the Magic City Kennel Club awarding the plaintiff a preliminary and or a perpetual injunction and profits and damages against the Magic City Kennel Club, a corporation of Oklahoma, without directing that [fol. 10] a preliminary as well as a perpetual injunction issue against John Shaughnessy, George H. Hurford, John J. O'Brien, and J. W. Colley, and the Magic City Kennel Club, Incorporated, citizens and or residents and inhabitants of the State of Oklahoma, will not afford plaintiff a complete or adequate remedy, or protect the plaintiff's exclusive rights and privileges in and under each of said aforesaid letters patent. Plaintiff has been unable to ascertain all of the relations, conspiracies and the other acts and doings of the individual defendants as hereinabove generally alleged, and prays for a full discovery thereof.

XVI

On information and belief plaintiff avers that some of the individual defendants herein named are partners, of said Magic City Kennel Club, the corporate defendant, and that they are in a peculiar and especial relation to said Magic City Kennel Club, and that all of said individual de-

fendants are acting participating in the unlawful acts and doings of said Magic City Kennel Club, and have done so heretofore, and threatened to continue so to do, and that in the beginning, and shortly before the organization of said Magic City Kennel Club, on, to wit: about the 1st of July, 1927, said individual defendants, or some of them, conspired together to usurp the rights and privileges granted by and in the patents to the said Owen P. Smith aforesaid, with full knowledge thereof, and of the rights of the said Owen P. Smith therein, and to damage and injure the said Owen P. Smith and the plaintiff and for unlawful gain and profit to themselves, and that as a result of such conspiracy and collaboration and united effort and intent, said Magic City Kennel Club, was organized to carry out the purpose of said individual defendants to bring about the infringement of the patents to said Owen P. Smith aforesaid, and that said individual defendants have gained or are about to gain large profits from their sole and joint acts and doings in this regard, which profits rightfully belong to the plaintiff, and the plaintiff has been and will be damaged by said acts. Plaintiff has been unable to ascertain all of the relations, conspiracies and other acts and doings of the individual defendants, and said Magic City Kennel Club, as hereinabove generally alleged, and prays for full discovery thereon.

XVII

The several defendants jointly and severally, well knowing the premises and the rights secured to the plaintiff, and rights of said patents prior to his death, as afore- [fol. 11] said, but contriving to injure the plaintiff, and deprive plaintiff of the benefits and advantages which might and otherwise would accrue unto her from said several inventions after the issuing of the said letters patent, as aforesaid, and before the commencement of this suit, did, as the plaintiff is informed and believes, without the license or allowance, and against the will of the plaintiff and against the will of said patentee during his lifetime, and in violation of plaintiff's rights, and in infringement of the aforesaid several letters patent, particularly claims 1 and 2 of Patent No. 1379224, Claims 1, 2 and 3 of Patent No. 1507440, and the claim or claims of Patents No. 1507439, 1630811 and 1630812, near the City of Tulsa (County of Tulsa),

State of Oklahoma, and elsewhere in the United States, unlawfully and wrongfully, and in defiance of the rights of the plaintiff, make, construct, use and vend to others to be used, the said several inventions, and did make, construct, use and vend to others to be used, several machines and devices made according to, and employing and containing said several inventions, and that defendants still continue so to do; and that defendants are threatening to make the aforesaid infringing machines and devices elsewhere and in increasing numbers, and to supply the market therewith, and to sell the same, all in defiance of the rights acquired, by and secured to the plaintiff as aforesaid, and to plaintiff's great and irreparable loss and injury, and by which she has been and still is being deprived of great gains and profits, which she might otherwise have obtained, and which have been received and enjoyed, and are being received and enjoyed, by the said several defendants jointly and severally by and through their aforesaid unlawful acts and doings.

XVIII

That plaintiff further shows unto your honors that she has caused notice to be given to said several defendants of said infringements, and of the rights of the plaintiff in the premises, and requested the said defendants to desist and refrain therefrom, but they have disregarded said notice, and still continue to make, use and sell machines and devices embodying the subject matter of said several letters patent.

Wherefore, plaintiff being without remedy except in this court of equity, prays,

(1) for a permanent injunction, and for a preliminary injunction pending this suit restraining the defendants and each of them and each of their officers, agents, employees, confederates, and attorneys from directly or indirectly em-
fol. 12] ploying, using or causing to be used the said invention, or either of them set forth in said letters patent and covered by said letters patent, to wit: numbered 1,379,224, numbered 1,507,439; numbered 1,507,440; numbered 1,630,811 and numbered 1,630,812; and from infringing upon or violating said letters patent in any manner whatsoever; and from selling or disposing of said infringement apparatuses or devices whereby the said patents to Owen P.

Smith may be infringed by others; and further, that said defendants may be ordered to deliver up to be destroyed or to be impounded said infringing apparatuses and devices.

(2) That said defendants be ordered to account for *any* pay the plaintiff the profits of the defendants, and each of them, respectiveiy, deprived by them from said infringing practices, also the plaintiff's damages occasioned by such infringing, and that any damages assessed may be tripled, because of the flagrant character of said infringement, and for such other and further relief as the equity and circumstances of the case may require.

May it please the court to grant unto the plaintiff a writ or subpena, under the seal of the court, directed to the Magic City Kennel Club, John Shaughnessy, George H. Hurford, John J. O'Brien, and J. W. Colley, Commanding them at a certain day and under a certain penalty, to be and appear before the court, then and there to answer this complaint (but not under oath, an answer under oath being expressly waived) and to stand and abide by such further orders, directions, and decrees as shall seem just in the premises.

And the plaintiff will ever pray.

Elton B. Hunt, W. L. Eagleton, Solicitor for Hannah M. Smith, Administratix of the Estate of Owen P. Smith, Plaintiff. C. Arthur Anderson, E. Howard McCaleb, of Counsel.

(Col. 123) *Dade* [illegible] *to the Hannah M. Smith. Jurat omitted in printing.*

Pltff.'s Ex. No. 1 to Bill of Complaint

Letters of Administration

In the County Judge, State of Florida

=3756

Estate of Owen P. Smith, Deceased

Dade County

To all to whom these presents shall come, greeting:

Whereas, Owen P. Smith, deceased, late of this county, died intestate, having while he lived and at the time of his

death, divers goods, chattels and credits within the county aforesaid, by means whereof the full disposition and power of granting the administration of all and singular the goods, chattels and credits of the said deceased, and also a final dismission from the same to the county judge aforesaid does of right belong:

Now, know ye, that I, W. F. Blanton, county judge for the county aforesaid, desiring that the goods, chattels and credits of said deceased may be well and truly administered and legally disposed of, do hereby grant unto Hannah M. Smith, administratrix, full power by the tenor of these presents to administer the goods, chattels and credits of said deceased, which to him, in his lifetime and at the time of his death did belong, and to ask, demand, sue for, recover and receive the same, and to pay the debts in which the deceased stood bound, so far as his assets will extend, according to law, and then the balance to pay over to the legal heirs and distributees of said deceased. And the said Hannah M. Smith, administratrix having given bond and security and taken oath, and performed all other requisities required by law necessary to her just qualifications as administratrix is, by order of this court and by virtue of these presents, [fol. 14] ordained constituted and appointed administratrix of all the goods, chattels and credits of said Owen P. Smith, deceased.

Witness, my name as judge aforesaid, and seal of office, this 21st day of January, in the year of our Lord one thousand nine hundred and twenty-seven at Miami, Dade County aforesaid.

W. F. Blanton, County Judge. (C. J. Seal.)

STATE OF FLORIDA,
Dade County:

Be it remembered that on this — day of ——, 19—, I duly recorded the foregoing Letters of Administration in the public records of said county.

——— ———, County Judge, by ———, Clerk.

#3756. In the County Judge's Court, Dade County, Florida. Estate of Owen P. Smith, deceased. Letters of Administration to Hannah M. Smith. Filed Jan. 21, 1927, and duly recorded and verified in Book 13, page 404, Record

of Administration. W. F. Blanton, County Judge. By Jean H. Thompson, Clerk.

Certificate

I, Jean H. Thompson, Clerk of the County Judge's Court in and for the County of Dade and State of Florida, do hereby certify that the above and foregoing is a true and correct copy of Letters Testamentary issued to Hannah M. Smith, Administratrix, in re Estate of Owen P. Smith, Deceased, late of Dade County, Estate of Florida, as the same remain on file and record in this court.

And I further certify that said Letters Testamentary are in full force and effect.

In Witness Whereof I have hereunto set my hand and official seal of said court at Miami, Florida, this 12th day of August, 1927.

Jean H. Thompson, Clerk County Judge's Court.
(Seal.)

County Judge's Court

State of Florida,
County of Dade:

I, W. F. Blanton, County Judge and sole presiding Judge of the County Judge's Court, do hereby certify that Jean H. Thompson, whose name is subscribed to the foregoing certificate was at the time of signing and sealing the same, Clerk of the County Judge's Court of Dade County, aforesaid, duly appointed and qualified to office. And that full faith and credit are and ought of right should be given to all his official acts as such, in all courts of record and elsewhere and that his attestation is in due form of law and by the proper officer.

[fol. 15] Given under my hand and official seal this 12th day of August, A. D. 1927.

W. F. Blanton, Judge of the County Judge's Court.

County Judge's Court

State of Florida,
County of Dade:

I, Jean H. Thompson, Clerk of the County Judge's Court in and for Dade County, Florida, do hereby certify that

W. F. Blanton, whose signature is appended to the foregoing certificate was at the time of signing the same, county judge and sole presiding judge of the county judge's court in and for said county, duly commissioned and qualified; and that full faith and credit are and of right should be given to all his official acts as such in all courts of record and elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court at Miami, Dade County, Florida, this 12th day of August, A. D. 1927.

Jean H. Thompson, Clerk of the County Judge's Court. (Seal.)

[File endorsement omitted.]

In United States District Court.

Order Setting Hearing on Temporary Injunction. Filed Sept. 16, 1927.

Now on this 16th day of September, 1927, bill of complaint having been filed and for good cause shown,

It is ordered that hearing for temporary injunction in the above cause be set for the 24th day of September, 1927, at the hour of 10 o'clock A. M., or as soon thereafter as the same may be heard.

It is further ordered that copy of this order be served on the defendants herein at least two days before said hearing.

E. E. Kenamer, Judge.

[File endorsement omitted.]

Attest: A true Copy. H. P. Wentcott, Clerk, by L. W. Jones, Deputy. (Seal.)

Original. Marshal Docket No. 940, Volume 2, page 478. Received Sep. 16, 1927. Henry G. Beard, U. S. Marshal, Tulsa, Okla.

[fol. 16] Returns. Filed Sept. 19, 1927.

Rec'd this writ Sept. 17, 1927, and executed same by delivering a true and correct copy in person to John Shaugh-

nessy, John J. O'Brien and J. W. Colley in their office 715 Alexander Bldg., 3 and Main 9-17-27.

In person to Geo. Hurford in his office in the Horse Shoe Restaurant 3 & Boulder. A true and correct copy to Geo. Hurford, Pres., in his office 3 & Boulder for the Magic City Kennel Club, Incorp. 9-17-27.

Henry G. Beard, U. S. Marshal, by Paul A. Johnson, Deputy.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF GEORGE SAWYER—Filed Sept. 20, 1927

STATE OF WISCONSIN,
County of Milwaukee, ss:

Before me, the undersigned authority, duly commissioned and qualified in and for the State of Wisconsin, County of Milwaukee, personally came and appeared George Sawyer, who, after being duly sworn did depose and say:

That he is a resident of the City of Miami, County of Dade, State of Florida, but now temporarily residing in the City of Milwaukee, State of Wisconsin; that he has been in the business of operating dog race tracks for a number of years and that during that period he has been very active in the promotion and management of dog race tracks; that he knew the patentee Owen P. Smith, for the last 15 years of his life and that said patentee is everywhere regarded by dog owners and the public as the original and only inventor of successful dog racing apparatuses employing an artificial lure used by dog race tracks.

Affiant further states I have been interested in and connected with greyhound racing since it was started in Emeryville, California, on Decoration Day, May 30th, 1920, and prior to that time dog racing in which a mechanical lure is employed was unknown; if any such dog racing had taken place I would have known it, as I had been prior to 1920 interested in and connected with the sport known as "cours-

ing" where two greyhounds were placed in a large enclosure to pursue and kill a live rabbit and where the contest is [fol. 17] decided on points; my connection with the sport of coursing, prior to 1920, covered a period of over twelve years.

I have known Owen P. Smith since 1908 and up to the date of his death in January, 1927.

While his application for Patent 1379224 was pending Smith built a track at Emeryville, California, covering the device called for in that patent, on or about May 30th, 1920; he gave a public exhibition on that date and it was a decided success from an operative standpoint. From there, in 1920, I accompanied Smith to Tulsa, Oklahoma, where another track was built under Patents 1379224, 1507440 and 1507439, subsequently issued. That was also a successful operation of a dog track as well as a commercial and official success.

Prior to Tulsa, Oklahoma, Smith was a very poor man; from that time on dog racing operations under Smith's patents, above stated, spread all over the United States in widely separated parts of the country, until sixteen (16) dog tracks using Smith's patents were in operation, each and all an operative success. Of these sixteen (16) dog tracks, Smith had a personal interest in four (4) of them, deriving dividends and large profits from them, and, besides deriving royalties from other tracks operating under license from Smith aggregating large amounts of money in royalties and running into the tens of thousands of dollars.

In the early part of 1922, Smith built and operated a dog track under his patents, in Madison County near East St. Louis, Illinois, which was and continued to be an operative and financial success. That track is still in existence today, and dog racing is successfully carried on there at this time.

From 1920, at Emeryville, California, and up to the present time, there have been built, approximately eighteen (18) dog tracks and operated either by Smith or his licensees. These dog tracks were so built and operated in the States of Missouri, Oklahoma, California, Michigan, Illinois, West Virginia, Wisconsin, Montana, Kentucky, Louisiana, Ohio, and in addition thereto in England, Canada and Panama—all operating under Smith's patents, aforesaid. Except tracks in Erlanger, Kentucky, Miami, Florida, and East St. Louis, Illinois (Madison County), in which Smith and his

administratrix were interested; all the others pay royalties to Smith and his administratrix. Prior to Emeryville, dog racing was as I have already stated, unknown.

By the uses of the devices called for in Smith's patents, aforesaid, this sport sprung into existence and became a new [fol. 18] sport, a new and hitherto unknown form of amusement and industry. The capital involved in this venture exceeds several million dollars. Large sums of money are distributed among laborers, dog owners and various other classes of industry, which without the use of Smith's patents would be diverted to other channels.

Affiant further states, I am and have been for many years past familiar with the value of greyhounds, beginning from my first connection with the sport known as "Coursing." I am also familiar with the value of greyhounds at the time that Smith's patents first came out and was immediately successful from an operative and financial standpoint. Prior thereto the highest value of or price of the greyhound was not more than One Hundred Dollars ($100.00), and immediately thereafter the value jumped to Three Hundred Dollars ($300.00), and continued to raise, and that value is today, One Thousand Dollars ($1,000.00), on a greyhound that was valued prior to 1920 at One Hundred Dollars ($100.00); and in addition thereto certain greyhounds of exceptional speed being worth today Twenty-five Hundred Dollars ($2,500.00), and more. This raise in the value of greyhounds was and is due solely to the operative success of Smith's patents and to no other cause.

Affiant further states that beginning with Emeryville, in 1920, the popularity of this new sport created by the Smith patents and devices was instantly and constantly increasing. Thousands of people visit these tracks every night; dog owners and all those interested in this new sport regard this creation to be entirely due to the operative success of Smith's patented devices. This public acquiescence has continued for more than five (5) years, since Emeryville, California, in 1920.

Affiant further states that not until the latter part of 1925, did infringement begin, and long after the public acquiescence of Smith's patents had been firmly recognized and established. These infringements were started and instigated by Smith's discharged employees, each and all of

whom had praised and proclaimed the novelty and utility of Smith's devices covered by his letters patent; and had assisted in bringing about the public acquiescence in Smith's Patents.

Affiant further states of his own knowledge that Smith wrestled with the problem for perfecting a device to create this new sport for *many* years prior to September 4, 1919, and it was not until he gave his first exhibition at Emeryville, California, in May, 1920, that success was achieved, and then only by the successful operation of his patent application of [fol. 19] Patents numbered 1379224, number 1507439 and number 1507440. Before these patents were put to practical use the only sport in which greyhounds or any dogs were employed was what was known as coursing where a live rabbit was used; the hounds would tear the rabbit to pieces and that brought about a protest from the Humane Society. I owned dogs for many years and attended all racing meetings, coursing meetings for a long time and it was universally acknowledged by those interested in coursing that the only way for testing the speed of hounds, would be in a new and more humane form of sport. Prio- to 1920, I, and all others interested in the hound had never heard of or seen any dog racing as developed by Smith's devices, and I lived in the land of the greyhound, the West, and had been in the habit of attending meetings, both when the course was enclosed and when the dogs chased the live rabbit in the open field.

The attendance at the coursing meetings was comparatively small; these meetings were held at stated intervals and were witnessed by about five hundred spectators. The dog racing meetings since Emeryville are attended by thousand-, nightly, on Derby Day at Miami, Florida, the attendance exceeded ten thousand (10,000) people. The number of dog racing tracks are increasing and demands are being made for the building and operation of tracks all over the country.

Affiant further states that during the period from the spring of 1921 until the autumn of the year 1925, all persons except patentee, or his authorized agents or licensees, refrained from using, selling, or making the inventions covered by the letters patent numbered 1507440, 1379224, and 1507439 for the reason that these inventions were patented

or applications for patents had been filed therefor although it would have been to the interest of third persons to adopt these inventions.

That during said period there was a general public acquiescence which continues to the present, and that said patentee, his associates, agents or licensees, have expended large sums of money in carrying on these inventions covered by said letters patents Nos. 1379224; 1507439 and 1507440 in introducing same into commercial use and such monopoly has been exclusive without question on the part of the public, excepting the attempted infringement of one C. W. Creveling at Atlantic City, but that said attempt has been abandoned.

Affiant further states that he knew John Shaughnessy, one of the defendants herein named and that said Shaughnessy acted in the capacity of racing secretary upon tracks [fol. 20] owned or operated by the patentee and that said Shaughnessy lauded and proclaimed the novelty and importance of the inventions covered by the said letters patent, and that the said Shaughnessy was instrumental in bringing to the public and to the attention of the public the value and utility of said inventions as well as the fact that patentee was the exclusive owner of the right to make, use and sell the devices covered by the said letters patent.

George Sawyer.

Sworn to and subscribed before me this 6th day of Sept. 1927. Rose B. Putz, Notary Public. My commission expires Nov. 16, 1930.

[File endorsement omitted.]

In United States District Court

Affidavit of Lee Fiedler—Filed Sept. 20, 1927

State of Wisconsin,
County of Milwaukee, ss:

Before me, the undersigned authority, duly commissioned and qualified in and for the County of Milwaukee, and State of Wisconsin, personally came and appeared Lee Fiedler, who, after being duly sworn did depose and say:

That during said period there was a general public acquiescence which continues to the present and that said patentee, his associates, agents, or licensees, have expended large sums of money in carrying on the inventions covered by said letters patent in introducing same into commercial use and such monopoly has been exclusive without question on the part of the public, excepting the attempted infringement of one C. W. Crevelling at Atlantic City, but that said attempt was abandoned shortly thereafter.

Affiant further states that he knows John Shaughnessy one of the defendants herein mentioned and named and that said Shaughnessy was in the employ of Owen P. Smith and said Shaughnessy lauded and proclaimed the novelty and importance of the inventions covered by said letters patent, and said Shaughnessy was instrumental in bringing to the attention of the public the value and utility of said inventions as well as the fact that said patentee was the exclusive owner of the right to make, use and sell the devices covered by the letters patent.

Murray Kemp.

Subscribed and sworn to before me this 6th day of Sept., 1927. Stella O. Dickey, Notary Public. (Seal.) My commission expires Dec. 12, 1928.

[Title endorsement omitted.]

[fol. 24] In United States District Court

Affidavit of Thomas W. Spencer. Filed Sept. 20, 1927

State of Missouri,
City of St. Louis, ss:

Before me, the undersigned authority, duly commissioned and qualified in and for the City of St. Louis, in the State of Missouri, personally came and appeared Thomas W. Spencer, who after being duly sworn, did depose and say:

That he resides in the City of Wichita, County of Sedgwick, and State of Kansas, but is temporarily residing in the City of St. Louis, and State of Missouri; that he has

been engaged in the business of coursing and racing greyhounds on various greyhound race tracks and has been associated with the tracks operated by Owen P. Smith for the past several years, and particularly from 1921 up to said Smith's death in 1926; that he was well acquainted with said Owen P. Smith, the inventor and patentee of the apparatus covered by the several letters patent of the United States numbered 1,379,224; 1,507,439; 1,507,440; 1,630,811 and 1,630,812, in the name of Owen P. Smith.

Affiant states that for several years, and particularly from the month of February, 1921, up to the death of said Smith in 1926, said Smith used, sold or licensed his inventions covered by his said letters patent, Nos. 1379224; 1507439; 1507440; and prior to the autumn of the year 1925, no person other than said Smith, or his representatives and licensees, assumed to make or sell devices embodying said inventions; that all persons, except said Smith and his associates, agents, and licensees, for several years past and prior to the autumn of the year 1925, have refrained from using or selling devices embodying the inventions covered by the said letters patent, for the reason that the said Smith was regarded by the public interested in dog racing as the inventor and patentee of the devices covered by his letters patent, and because his said inventions were known to be patented or to be the subject matter of applications for letters patent.

That in the year 1923 an attempt was made to infringe on one of said letters patent of Smith by one C. W. Creveling at Atlantic City, but that said infringement was shortly abandoned; that during the period, commencing in the spring of 1921 and up to the fall of 1925, there was a general public acquiescence in the devices Nos. 1379224; 1507439; 1507440; patented by Smith and used particularly in the operation, maintenance and exploitation of dog race tracks, and the public recognized that Smith, his associates, agents, and licensees had an exclusive right to make, [fol. 25] use, and sell the several inventions covered by said several letters patent; and that affiant further states that said Smith, and his associates, have expended great sums commercially exploiting the said inventions covered by the said letters patent, and introducing the said inventions into general use, and that said use has been exclusive with said Smith and his licensees and without question on

the part of anybody prior to the latter part of the year 1925, with the single exception of the attempt of infringement by C. W. Crevoling which was later abandoned as hereinabove recited.

Affiant further states that the first time that he ever heard of, or ever saw, dogs chasing a mechanical lure was in 1921, and that said lure and dog race track were employed was under the supervision of Owen P. Smith, the patentee herein mentioned, and that said track was owned and operated by Owen P. Smith. Had such use of a mechanical lure previously occurred he believes that he would have heard of it.

Affiant further states that he knows John Shaughnessy one of the defendants herein named and that said Shaughnessy acted in the capacity of racing secretary upon tracks owned and operated by patentee and that said Shaughnessy lauded and proclaimed the novelty and importance of the inventions covered by the said letters patent, and that said Shaughnessy was instrumental in bringing to the attention of the public the value and utility of said inventions as well as the fact that patentee was the exclusive owner of the right to make, use and sell the devices covered by the said letters patent.

T. W. Spencer.

Subscribed and sworn to before me this 6th day of Sept., 1927. Stella O. Dickey, Notary Public. (Seal) My commission expires Dec. 12, 1928.

[File endorsement omitted.]

In United States District Court

Affidavit of N. Hayden. Filed Sept. 20, 1927

State of Missouri,
City of St. Louis, ss:

Before me, the undersigned authority, duly commissioned and qualified in and for the State of Missouri, and City of St. Louis, personally came and appeared N. Hayden, who after being duly sworn, did depose and say:

[fol. 26] That he is a resident of the City of Miami, County of Dade, State of Florida, but now temporarily re-

State of New York, personally came and appeared P. J. Sullivan, who after being duly sworn according to law did depose and say:

That his home is in Tulsa, Oklahoma; that he is temporarily residing in Rochester, New York; that he has been engaged in greyhound racing in various capacities; and that he was employed by Owen P. Smith from Washington's birthday, February 22, 1921, until said Smith's death in 1927. Since the first of the current year he has been acting in the capacity of president of the International Grey Hound Racing Association; and that he was well acquainted with said Smith during the latter's lifetime.

Said Smith was the first and only individual, to his knowledge, who conducted a grey hound race track in which there was a starting cage for racing dogs, and a combination housing for conveyor cars and tracks covered by said housing, and in which said housing had a longitudinal slot from which a support or arm extended to the conveyor and which was connected with said conveyor cars at one end and of which arm a mechanical rabbit was attached, as his letters patent Nos. 1,379,224, 1,507,440, 1,507,439. It was generally understood that Smith had applied for and had made application for letters patent for the various devices.

That during the period from February, 1921, until the latter part of the autumn of 1925, except for said Owen P. Smith and his authorized agents and licensees, all persons refrained from using, selling or manufacturing the devices described and which covered the inventions of said Smith covered by his letters patent for the reason, such persons refraining from such use of the inventions because it is and was patented; although it would have been to the interest of third persons to adopt Smith's structures.

That during said period just referred to, there was a general public acquiescence in the validity of said Smith's patents, Nos. 1,379,224, 1,507,439, 1,507,440 and that said Smith was then and has been since recognized as the sole inventor of the devices covered by his letters patent. That Smith and his associates, agents and licensees have expended large sums for employing Smith's inventions cov-

ered by the said inventor's patents and introducing the same into public use.

Affiant further states that said Smith has been considered and regarded by the public interested in grey hound racing as the father and founder of gray hound racing amusements as now and for the past several years conducted, and wherein starting cages for racing dogs, [fol. 28] conveyor cars, lure conveyors, and the combination of lure conveyors operated on tracks in a continuous housing provided with a longitudinal slot through which an arm or support protrudes and which is connected with said conveyor cars and tracks; and that Smith's said devices constitute the only practical known devices for an advantageous and successful operation of dog racing.

Affiant further states that he has been engaged all of his time as judge on dog racing tracks since the year 1921, with the exception of a short period when he was president of the International Grey Hound Racing Association.

Affiant further states that he is well acquainted with one John Shaughnessy and that said Shaughnessy acted in the capacity of "Racing Secretary" on various tracks throughout the United States owned or operated by Owen P. Smith or licensees of Owen P. Smith, and where the said Shaughnessy participated in the exploitation of the inventions and patents of Owen P. Smith; that said Shaughnessy did, to affiant's knowledge, proclaim the utility and novelty of Smith's said inventions and of the devices covered by said letters patent; that he was employed by said Smith in the operation, maintenance and exploitation of dog race tracks of said Smith; and that said Shaugnessy was one of the several parties introducing Smith's said devices and inventions covered by said letters patent in commercial use.

Affiant further states that the International Grey Hound Racing Association, of which he was president has for its object and purposes, the improvement, maintenance, and benefit of grey hound racing in the United States, Great Britain, and Canada, and for the further purpose of maintaining said sport and the tracks conducted and operated under the several patents to Owen P. Smith.

Affiant further states that prior to February 22, 1921, there was little or no demand for thoroughbred grey hounds

or for grey hounds bred and used for dog racing purposes; that prior to said date the value of a grey hound scarcely exceeded the sum of $75.00 per dog; and that solely and exclusively by reason of the exploitation of Smith's patents, and the public acquiescence therein and recognition thereof, as aforesaid, the value of a thoroughbred grey hound for racing purposes has increased until it averages about $1,000.00 per dog; that there are some thoroughbred grey hound dogs whose value exceeds said amount; and that this increased value is due entirely and exclusively to the demand created for said thoroughbred grey hounds because [fol. 29] of the public recognition of and acquiescence in the patents of Owen P. Smith and their exploitation, and because his inventions possessed a commercial adaptability which has contributed to the rapid rise in dog racing.

P. J. Sullivan.

Subscribed and sworn to before me this 6th day of Sept., 1927. C. E. Marsh, Notary Public. (Seal) My commission expires March, 1928.

[File endorsement omitted.]

In United States District Court

Affidavit of D. E. Baker—Filed Sept. 22, 1927

State of Missouri,
City of St. Louis, ss:

Before me, the undersigned authority, duly commissioned in and for the City of St. Louis, and the State of Missouri, personally came and appeared D. E. Baker, who after being duly sworn did depose and say:

That he resides in the City of Chicago, and the State of Illinois, but that he is temporarily sojourning in the City of St. Louis; that he has been in the business of racing judge upon tracks owned or operated by Owen P. Smith and licensees of said Smith and that he has known the said Smith for the past six years up to the time of the death of said Smith, that he was well acquainted with the inventor and patentee, Owen P. Smith, and the plaintiff, Mrs. Hannah M. Smith, widow of Smith.

Affiant further states that there has been a general public acquiescence in the patents issued to said Smith, numbering 1,379,224, 1,507,439, 1,507,440 and relating to the devices used in association with dog racing tracks, these devices being used by said Smith on tracks owned or operated by him or on tracks where said Smith licensed the use of his patents.

Affiant further states, to his knowledge, that for a period of five years particularly from the year 1921, all persons except patentee, or his authorized agents or licensees, refrained from using, selling or making the inventions covered by said letters patent excepting and abandoned attempted infringement of one former associate of said Smith one C. W. Creveling but that same has long since ceased.

[fol. 30] Affiant further states that he was well acquainted with the defendant John Shaughnessy, and that he knew the said Shaughnessy was in the employe of said Smith prior to the death of Smith and that said Shaughnessy acted in the capacity of a racing secretary upon tracks owned or operated by said Smith or his licensees.

D. E. Baker.

Subscribed and sworn to before me this 20th day of Sept., 1927. Stella O. Dickey, Notary Public. (Seal) My commission expires Dec. 12, 1928.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF FRANK MARGESON—Filed Sept. 22, 1927

STATE OF MISSOURI,
City of St. Louis, ss:

Before me the undersigned authority, duly commissioned and qualified in and for the City of St. Louis, State of Missouri, personally came and appeared Frank Margeson, who after being duly sworn did depose and say:

That he resides in the City of Miami and State of Florida, and that he is temporarily sojourning in the City of St.

Louis, State of Missouri; that he has been engaged in the banking business for the past 10 years and that he was well acquainted with the patentee and inventor, said Owen P. Smith, for the last five years of said Smith's life.

Affiant further states that there has been a general public acquiescence in the patents issued to said Smith numbering 1,379,224; 1,507,439; 1,507,440 in the name of Owen P. Smith and relating to the devices used in association with dog racing tracks, these devices being used by said Smith on tracks owned or operated by him or on tracks where said Smith licensed the use of his patents.

Affiant further states, to his knowledge, that for a period of five years particularly from the year 1921, all persons except patentee, or his authorized agents or licensees, refrained from using, selling or making the inventions covered by said letters patent excepting an abandoned infringement thereof of one C. W. Creveling at Atlantic City, which has long since ceased.

Affiant further states that he is now the secretary of the [fol. 31] International Greyhound Association and has been acting in such capacity since May 1st, 1927.

Frank Margeson.

Subscribed and sworn to before me this 20th day of Sept., 1927. Stella O. Dickey, Notary Public. (Seal) My commission expires Dec. 12, 1928.

[File endorsement omitted.]

In United States District Court

Affidavit of Clement O. Gittinger—Filed Sept. 23, 1927

State of Oklahoma,
County of Tulsa, ss:

Before me, the undersigned authority, duly commissioned and qualified in and for the County of Tulsa, State of Oklahoma, personally came and appeared Clement O. Gittinger, who after being duly sworn did depose and say:

That he resides in the City of Tulsa, State of Oklahoma,

drawings, specifications and
Nos. 1,559,224, 1,567,440 and
examined the device used at
Referring to claims 1 and 2
I testify that the device
device [illegible] is identical with the
Smith in claims 1 and 2
Identical" I wish to call at-
No. 1, the device is located
and according to claim
other side, whereas the
mounted on the inner
Identical" I wish
Smith's claims 1
from the con-
hinged to the con-
pivotably mounted at
The function of the
in the specifications
means that maintain the
arm and the consequent
conveyor cat is rapidly
traveling at a rate of speed of approximately forty five to
fifty miles per hour. The device at the Magic City Kennel
Club omits the wheel contact of the arm at its projecting
end and transfers the support of the arm at its projecting
end and substitutes for this support by pivoting the arm
rigidly to the conveyor cat at its inner or connecting end.
This substitution is the mechanical equivalent of the arm
supported at its projecting end by the wheel rotating on
the ground during the race or rather while the car is in
motion. In other words, supporting the arm by means of
[illegible] a rigid connection on the car is the mechanical
equivalent of supporting the arm by means of a wheel ro-
tating on the ground at its projecting end, and this is so
because the function in both situations is the same namely
support of the arm whilst in an operative position and the
result is the same, namely to keep the arm rigid and in con-
sequence to maintain the lure on the projecting end of the
arm during the race. There is both identity of function
and substantial identity of way of performing that func-
tion. If a skilled mechanic having Smith's specification,

drawing and claims before him is called upon to hinge the arm and support it at its projecting end, by a wheel, and the wheel is not available, he would, in order to support the arm for operation while the car is in motion, connect it rigidly to the connecting end. If being without means of supporting the arm at its projecting end, he would make it rigid or support it by rigidly attaching it to the car. The function is identical and the way of performing that function is substantially identical.

Regarding Patent No. 1,507,340, the housing used by defendants at Magic City Kennel Club and that called for in claim No. 1 of that patent are both identical. The housing used at Magic City Kennel Club is a copy of that claim. The object and purpose of the truss rods called for in the claim and used at Magic City Kennel Club are the same. This truss rod is the member of a truss, that is to say an assemblage of members combined to form a rigid frame work. The strain on the members is that of compression and tension and the truss rod is used for sustaining the side of the housing above the continuous opening; that is to say, the roof. The truss rods called for in the patent and used at Magic City Kennel Club housing, serve to prevent deflection or sagging of the beam or roof of the housing.

Affiant further states that he has read and seen the specifications, drawings and claims in Smith's patent No. 1,630,812 and I have seen the traction car used at the Magic City Kennel Club, and that I have seen same both in and out of operation and that same has been carefully inspected by me. Referring to claim 1, 2 and 3 of Smith's patent No. 1,630,812, I testify that the conveyor or traction car used at Magic City Kennel Club is identical with the traction car described and claimed by Smith in claims 1, 2 and 3 and is a copy of that claim or claims, namely "In a traction car of the class described, the combination with a frame, of a motive power mounted upon said frame, traction wheels mounted upon an axle rotating in bearings rigidly attached to said frame, wheels mounted upon a second axle rotating [fol. 34] in bearings mounted upon a support adapted to rotate pivotally about its midcenter, guides and engaging the frame to hold said support in horizontal position and springs connected between said support and the frame

adapted to hold said wheels normally in alignment with the aforementioned wheels.

In a device of the class described, the combination with a motor driven car, of an axle rotatably mounted in bearings, rigidly attached to said car, wheels fixidly mounted upon said axle, a second axle rotatably mounted in bearings attached to a cross bar pivoted at its midcenter to the frame and adapted to turn to right or left, bolts extending through said cross bar and springs connected from said bolts to the frame on either side of center adapted to hold said cross bar normally at right angles to the direction of travel of the car.

In a device of the character described, a frame comprising side and end members, an axle journalled in bearings carried by the frame and having wheels thereon, cross members extending transversely of the frame to form supports, a cross bar pivotally supported by one of the cross members for swinging movement in a horizontal plane, an axle carrying wheels journalled in supports on said pivotal cross bar and guides to engage the cross bar at each end thereby holding the cross bar in horizontal position, bolts passing vertically through the cross bar on both sides of the pivotal connection between the cross bar and cross member and springs connecting the said bolts with a second cross member to hold said cross bar and the axle carried thereby normally at right angles to the direction of travel of the car, and means for propelling the car carried by said last mentioned cross member.

Clement O. Gittinger.

Subscribed and sworn to before me this 23rd day of September, 1927. Edna Gillespie, Notary Public. (Seal) My commission expires August 23rd, 1931.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF THOMAS A. KEEN—Filed Sept. 23, 1927

STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, the undersigned authority, duly commissioned and qualified in and for the County of Tulsa, State

of Oklahoma, personally came and appeared Thomas A. Keen, who after being duly sworn did depose and say: [fol. 35] That he resides in the City of New Orleans, State of Louisiana, at No. 2458 North Johnson Street and that he is temporarily sojourning in the City of Tulsa. He states that he has personally visited the dog race tracks operated by infringers of the Smith patents, particularly the Magic City Kennel Club; this enterprise is being operated for profit and an admission fee is charged, I, among others paying therefor. I am a mechanical and construction engineer and have been engaged in the business of dog racing amusements for several years past. I have had experience as a practical construction engineer and in building dog racing tracks, housing and starting cage for racing dogs, sufficient to qualify me in that line of industry. I have built dog race tracks in the States of Texas, Arizona, Illinois, Wisconsin, Montana, Missouri and New York and I have inspected the construction of dog race tracks in the States of Florida, Louisiana, Ohio, West Virginia and Kentucky.

I have visited the Magic City Kennel Club dog race track and have carefully observed the housing for conveyor cars and tracks located at and in said Magic City Kennel Club and operated by the above named parties and I testify that there is in use at said Magic City Kennel Club, a housing for covering tracks and cars having a laterally extending arm operating upon said track, the combination of posts set in the ground at the sides of said track, timbers attached to said posts to form a frame, and boards attached to said timbers and posts to form a continuous inclosure above said track, and having a continuous opening in one side of said housing adapted to permit extension of the laterally extending arm therethrough, and truss rods attached to the closed side of the housing adapted to support and supporting the side of the housing above the continuous opening.

I further state that I have carefully observed and testify that there is in use at the dog racing amusement, at the said Magic City Kennel Club, a race course suited for dogs, a casing extending around the inner side of the race course and provided with a longitudinal opening, a mechanical conveyor including a track extending around the race course and located within the casing a conveyor car me-

chanically operated upon said track and provided with an arm rigidly supported at its inner end and to the car and extending through the longitudinal opening of the casing in a projecting position over the track, a platform supported by said arm and a lure in the form of a stuffed rabbit mounted upon said arm and said platform at its outer end.

[fol. 36] I am well acquainted with the drawings, specifications and claims of Smith's Patents Nos. 1,379,224, 1,507,439, 1,507,440 and I have examined and seen the device used at the Magic City Kennel Club. Referring to claims 1 and 2 of Smith's Patent No. 1,379,224, I testify that the device used at the Magic City Kennel Club, is identical with the device described and claimed by Smith in claims 1 and 2 of that patent. When I say "identical" I wish to call attention that under Smith's claim 1, the device is located at the outer side of the race course and according to claim No. 2 it may be located on one or either side, whereas the device at the Magic City Kennel Club is located on the inner side of the said race course. And when I say "identical" I wish to call attention that under Smith's claims 1 and 2, that the horizontal extending arm from the conveyor car to the course is attached or hinged to the conveyor car and is supported by a wheel rotably mounted at its projecting end during the race. The function of the wheel is to give stability or as stated in the specifications and claims, as a support to the arm and thus maintain the stability and equilibrium of the arm and the consequent maintenance of the lure whilst the conveyor car is traveling at a rate of speed of approximately forty-five (45) to fifty (50) miles per hour. The device at the Magic City Kennel Club substitutes for wheel support of the arm at its projecting end and transfers this support of the arm at its projecting end and substitutes for this support by pivoting the arm rigidly to the conveyor car at its inner end or connecting end. This substitution is the mechanical equipment of the arm supported at its projecting end by the wheel rotating on the ground during the race or rather while the car is in motion, in other words, supporting the arm by means of a rigid connection on the car is the mechanical equivalent of supporting the arm by means of a wheel rotating on the ground at its projecting end, and this is so because the function in both situations is the same, namely, support of

the arm whilst in an operative position and the result is the same, namely, to keep the arm rigid and in consequence to maintain the lure on the projecting end of the arm during the race. There is both identity of function and substantial identity of way of performing that function. If a skilled mechanic having Smith's specification, drawings and claims before him is called upon to hinge the arm and support it at its projecting end, by a wheel, and the wheel was not available, he would, in order to support the arm for operation while the car is in motion, connect it rigidly to the connecting end. If being without means of supporting the arm at its projecting end, he would make it rigid or [fol. 37] support it by rigidly pivoting it to the car. While Smith's wheel support is better method, the function and result, nevertheless, is the same. The function is identical and the way of performing that function is substantially indentical.

Regarding patent No. 1,507,440, the housing used by defendants at Magic City Kennel Club and that called for in claim No. 1 of that patent are identical. The housing used at the Magic City Kennel Club is an exact copy of that claim. The object and purpose of the truss rods called for in the claim and used at the Magic City Kennel Club are the same. This truss rod is a member of a truss, that is to say an assemblage of members combined to form a rigid frame work. The strain on the members are that of tension and compression and the truss rod is used for sustaining the side of the housing above the continuous opening; that is to say, the roof. The truss rods called for in the patent and used at the Magic City Kennel Club housing, serve to prevent deflection or sagging of the beam or roof of the housing.

I have known the late Owen P. Smith for over fifteen (15) years. He is regarded by the public interested in dog racing as the sole inventor and patentee of the only successful device known, no other devices having been made or used prior to his invention. The devices constructed under Smith's patents are and have been successful, both from an operative, commercial and financial standpoint. I was present and assisted in constructing a device for Smith in 1910 at Houston, Texas and Tucson, Arizona, under his 1912 patent, the experiment proving a failure, was inoperative and abandoned. Since the years 1920 and

1921, over nineteen (19) tracks for dog racing have been established in this country that have used and are using Smith's devices under patents 1,379,224; 1,507,439; and 1,507,440, also in addition thereto in England, Canada and Panama. The average cost of construction of a dog racing track employing Smith's device is approximately $100,000.00. Several of these tracks cost more than that and a few cost a little less.

Smith, and now Mrs. Smith, his administratrix, is interested in three (3) tracks constructed by Smith himself, one in Miami, Florida, one in Madison County, near East St. Louis, Illinois, and one in Erlanger, Kentucky. The balance have been constructed by Smith's licensees from the year 1920, and when Smith's device covered by the above named patents first appeared it gained great instant popularity and success. This great popularity and public acquiescence of Smith's patents is and has been recognized since 1920 or 1921; the average nightly attendance at dog [fol. 38] race tracks operated under Smith's aforesaid patents is thirty-five hundred (3500) people and the approximate cost of operation nightly is thirty-five hundred dollars ($3500.00). There is an increased demand for licenses to operate dog tracks under Smith's patents. That the operations due to said patents have been and are profitable and the royalties therefrom aggregate thousands of dollars yearly.

Affiant further states that for several years past and particularly from the year 1920 up to the present time, Owen P. Smith (now deceased) and the plaintiff, his administratrix, have made, used and sold or licensed said invention covered by said Letters Patent Nos. 1,379,224; 1,507,439 and 1,507,440; and prior to the latter part of the year 1925, no person other than Smith, his representatives and licensees, had attempted to make or sell the same; that all persons except the said Smith, his associates, agents and licensees have for several years past and prior to the autumn of the year 1925, refrained from using or selling said invention covered by said Letters Patent, for the reason that the said Smith has been regarded by the public interested in dog racing as the inventor of the device covered by his letters patent; that there has been during said period a general public acquiescence, particularly in the operation, main*tainence* and exploitation of dog race tracks, that the

said Smith, his associates, agents and licensees had the exclusive right for the making, using and selling of the invention covered by said Letters Patent; that said Smith and his associates and licensees have expended large sums in carrying on the said invention covered by said Letters Patent and in introducing the same into practical use and that said use and value has been exclusive, without question on the part of the public prior to the latter part of the year 1925. He further states that he was informed that an attempt was made to encroach upon said Letters Patent by one W. C. Creveling but that said attempt was shortly abandoned.

Affiant further states that by the uses of the devices called for in Smith's patents, aforesaid, the sport now known as dog racing sprung into existence and became a new sport, a new and hitherto unknown form of amusement and industry. The capital involved in this sport or industry exceeds several million dollars. Large sums of money are distributed among laborers, dog owners and various other classes of industry, which without the use of Smith's patents would be diverted to other channels. Affiant further states that the popularity of this new sport created by Smith's patents and devices instantly popularized about the years 1920 and 1921 is constantly increasing.

[fol. 39] Affiant further states that he has read and seen the specifications, drawings and claims in Smith's patent No. 1,630,812 and I have seen the traction car used at the Magic City Kennel Club and I have seen same both in and out of operation and that same has been carefully inspected by me. Referring to claim 1, 2 and 3 of Smith's patent No. 1,630,812, I testify that the conveyor or traction car used at the Magic City Kennel Club is identical with traction car described and claimed by Smith in claims 1, 2 and 3 and is a copy of that claim or claims, namely "In a traction car of the class described, the combination with a frame, of a motive power mounted upon said frame, traction wheels mounted upon an axle rotating in bearings rigidly attached to said frame, wheels mounted upon a second axle rotating in bearings mounted upon a support adapted to rotate pivotally about its midcenter, guides engaging the frame to hold said support in horizontal position and springs connected between said support and the frame

adapted to hold said wheels normally in alignment with the aforementioned wheels.

Also, the combination with a motor driven car, of an axle rotatably mounted in bearings, rigidly attached to said car, wheels fixedly mounted upon said axle, a second axle rotatably mounted in bearings attached to a crossbar pivoted at its midcenter to the frame and adapated to turn to right or left, bolts extending through said cross bar and springs connected from said bolts to the frame on either side of its center adapted to hold said cross bars normally at right angles to the direction of travel of the car.

Also, a frame comprising side and end members, an axle journalled in bearings carried by the frame and having wheels thereon, cross members extending transversely of the frame to form supports, a cross bar pivotally supported by one of the cross members for swinging movement in a horizontal plane, an axle carrying wheels journalled in supports on said pivotal cross bar and guides extending upwardly and outwardly to engage the cross bar, thereby holding the cross bar in horizontal position, bolts passing vertically through the cross bar on both sides of the pivotal connection between the cross bar and cross member and springs connecting with the said bolts with a second cross member to hold said cross bar and the axle carried thereby normally at right angles to the direction of travel of the car, and means for propelling the car carried by said last mentioned cross member. Thousands of people visit these tracks every night: dog owners and all those interested in this new sport regard this creation of a new industry and form of sport to be entirely due to the operative success of the devices called for in Smith's patents.

[fol. 40] Affiant further states that he has inspected and observed the housing, conveyor car and dog racing device at Heinemann Park, New Orleans, constructed by or through one G. W. Heintz, one of the defendants in the case entitled Smith vs. American Electric Rabbit Racing Association, and G. W. Heintz, operating under the name of American Electric Rabbit Racing Association and New Orleans Kennel Club in the United States District Court for the Eastern District of Louisiana. That affiant testified in that case as a witness first by affidavit on application for preliminary injunction which was issued against

said Heintz and secondly as a witness on the merits of that case wherein a permanent injunction was issued against said Heintz. Affiant further states that there is no difference between the devices, such as the housing, the conveyor car, and dog racing device covered by patents 1379224, 1507440 and 1630812 found as an infringement in the New Orleans case and the housing, the conveyor car, and dog racing device he has observed and examined at Magic City Kennel Club.

Thomas A. Keen.

Sworn to and subscribed before me this 23rd day of September 1927. Edna Gillespie, Notary Public. (Seal) My commission expires Aug. 23rd, 1931.

[File endorsement omitted.]

In United States District Court

Order Granting Temporary Injunction—Filed Sept. 24, 1927

This cause came on to be heard on the application for a preliminary injunction or injunction pending the final hearing and after hearing the plaintiff's affidavits, testimony and argument of counsel and on consideration thereof,

It is ordered that a temporary injunction issue herein enjoining, restraining and prohibiting the defendants, Magic City Kennel Club, Inc., John Shaughnessy, George Hurford, John J. O'Brien, and J. W. Colley, and each of them, and each of their officers, agents and employes and attorneys from making or causing to be made, selling or causing to be sold, using or causing to be used, directly or indirectly, and in any manner whatsoever, the invention the subject-matter of United States Letters patent No. 1,379,224 and claimed by claims Nos. one and two thereof, and United States Patent No. 1,507,440 and claimed by claim numbers one, two and three thereof and United States Letters Patent No. 1,630,812, and claimed by claim numbers [fol. 41] one two and three thereof, and that defendants above named be further enjoined, prohibited and restrained, until the final decree to be rendered in this cause from infringing upon or violating said above letters patent and

the claims herein set forth in any manner whatsoever and from selling or disposing of the infringing apparatus or device whereby said patents may be infringed by others.

It is further ordered that writs of injunction pendente lite issue under the seal of this court, directed to said defendants and each of their officers, agents, employees and attorneys and each of them as hereinbefore stated upon plaintiff furnishing bond in the penal sum of $40,000.00, conditioned upon the payment of such damages as the defendants may suffer in case it should be determined that said writ of injunction was wrongfully obtained.

Provided, that the defendants or either of them shall within three days from this date, that is to say on or before Tuesday, September 27th, 1927, at the hour of 10 o'clock a. m., file with the clerk of this court a good and sufficient bond to the plaintiff in the penal sum of $20,000.00, in liquidated damages, approved by the court, conditioned that if it shall in this cause be determined on final hearing by this court and finally sustained if appealed, that the defendants or either of them have violated or infringed any one of the claims thereof, or that the apparatus or device made, used or sold by defendants have infringed any one of the aforementioned letters patents or any one of the claims thereof or that the apparatus or device made, used or sold by defendants have infringed any one of the aforementioned patents, or any one of the claims thereof, or that the defendants or either one of them have disposed of said infringing apparatus or devices, the obligor shall pay, or cause to be paid, to the obligee the sum of $20,000.00. Such bond shall contain a stipulation that said sum of $20,000.00 has been fixed by the order of this court as liquidated damages suffered by the plaintiff from such infringement and the consent of the obligors that judgment may be entered for the above amount due thereon in connection with and as part of the final decree in this cause. And in the event said bond for stipulated damages is furnished and approved by the court in accordance with this order within the delay hereinabove set forth, then the writ of injunction hereby ordered to be issued be withheld. Otherwise that said writ of injunction issue as hereinbefore ordered.

F. E. Kennamer, Judge.

[File endorsement omitted.]

[fol. 42] IN UNITED STATES DISTRICT COURT

INJUNCTION BOND—Filed Sept. 29, 1927

Know all men by these presents:

That we, Hannah M. Smith, administratrix of the estate of Owen P. Smith, as principal and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto Magic City Kennel Club, a corporation of Oklahoma, John Shaughnessy, George H. Hurford, J. J. O'Brien and J. W. Colley, defendants above named, in the penal sum of Forty Thousand Dollars ($40,000.00), for the payment of which sum, well and truly to be made, we do bind ourselves and each of us, jointly and severally by these presents.

The condition of the above obligation is such, that, whereas the above named plaintiff has procured a temporary injunction to be issued in the above entitled cause against the above named defendants, Magic City, Kennel Club, a corporation of Oklahoma, John Shaughnessy, George H. Hurford, John J. O'Brien and J. W. Colley.

Now, therefore, if the said plaintiff shall pay to the party injured all damages which they may sustain by reason of said injunction, if it shall be finally determined that said injunction was wrongfully obtained, then this obligation shall become void. Otherwise to remain in full force and effect.

In witness whereof, we have hereunto subscribed our names this 28th day of September, 1927.

Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, by Thomas A. Keen, Attorney-in-fact, Principal. Fidelity and Deposit Company of Maryland, Surety. By W. Lyle Dickey, Its Attorney-in-fact. (Seal.)

Approved. F. E. Kennamer, Judge.

[File endorsement omitted]

[fol. 43] IN UNITED STATES DISTRICT COURT

STIPULATED DAMAGE BOND—Filed Sept. 30, 1927

Know all men by these presents:

That we, the Magic City Kennel Club, a corporation, of Oklahoma, as principal and the National Surety Company

of New York, New York, as surety are held and firmly bound unto Hannah M. Smith, administratrix of the Estate of Owen P. Smith, deceased, the plaintiff above named, in the stipulated sum of $20,000.00, payment of which sum well and truly to be paid, we do bind ourselves and each of us jointly and severally by these presents.

The condition of the above obligation is such that, whereas the above named plaintiff on the 24th day of September, 1927, procured a temporary injunction to be issued in the above entitled cause against the above named defendant, the Magic City Kennel Club, a corporation of Oklahoma and whereas said order of injunction provided among other things as follows:

"Provided, that the defendants or either of them shall within six days from this date, that is to say on or before Friday, September 30th, 1927, at the hour of 10 o'clock a. m., file with the clerk of this court a good and sufficient bond to the plaintiff in the penal sum of $20,000.00, in liquidating damages, approved by the court, conditioned that if it shall in this cause be determined on final hearing by this court, and finally sustained if appealed, that the defendants or either of them have violated or infringed any one of the claims thereof, or that the apparatus or device made, used or sold by the defendants have infringed any one of the aforesaid letters patent or any one of the claims thereof or that the apparatus or device made, used or sold by defendants have infringed any one of the aforementioned patents, or any one of the claims thereof, or that the defendants or *or* either one of them have disposed of said infringing apparatus or devices, the obligator shall pay, or cause to be paid, to the obligee the sum of $20,000.00.

Such bond shal- contain a stipulation that said sum of $20,000.00 has been fixed by the order of this court as liquidated damages suffered by the plaintiff from such infringement and the consent of the obligors that judgment may be entered for the above amount due thereon in connection with and as part of the final decree in this cause. And in the event said bond for stipulated damages is furnished and approved by the court in accordance with this order within the delay hereinabove set forth, then the writ of injunction [fol. 44] hereby ordered to be issued be withheld, otherwise that said writ of injunction issue as hereinbefore ordered."

This bond is therefore made pursuant to said order, and

conditioned as therein required and it is agreed that said sum of $20,000.00 has been fixed by the court and is stipulated to be the damages suffered by the plaintiff from the infringement, if any there be, and said obligors agree and consent that judgment may be entered for the above amount as a part of the final decree in this court, and finally sustained if appealed.

Now Therefore, if the said defendants shall pay to the said plaintiff the sum of $20,000.00 if it shall be finally determined that said defendants or either of them, their servants, agents or attorneys or either of them have infringed any of the letters patent or any one of the claims thereof, then this obligation shall become void, otherwise to remain in full force and effect.

In Witness Whereof, we have hereunto subscribed our names this 30th day of September, 1927.

Magic City Kennel Club, by G. H. Hurford, President. Attest: Jno. J. O'Brien, Secretary. (Seal.)
National Surety Company of New York, N. Y., by L. N. Ewing, Resident Vice-President. By P. J. Glover, Resident Asst. Secretary. (Seal.)

Approved. F. E. Kennamer, Judge.

[File endorsement omitted.]

In United States District Court

Motion and Order for Cancellation of Bond—Filed Oct. 6, 1927

To the Honorable the Judge of the United States District Court in and for the Northern District of Oklahoma:

Comes plaintiff, Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, deceased, and suggests to the [fol. 45] court that on the 24th day of September, 1927, an order was entered in this cause granting a preliminary injunction upon plaintiff giving bond in the sum of $40,000.00 subject to a suspension of said injunction in the event that defendants furnish and file bond for stipulated damages in plaintiff's favor in the sum of $20,000.00 on or before Tuesday, September 27th, 1927, at 10 o'clock a. m., all of which will more fully and at large appear from said order of date September 24th, 1927, here referred to for greater cer-

tainty. That defendants failed to file said bond for stipulated damages on the day and date fixed by said order, whereupon plaintiff furnished and filed her bond on the 29th day of September, 1927, in accordance with said order. That immediately after filing said bond on plaintiff's behalf, to-wit, on the 30th day of September, 1927, defendants furnished and filed a bond in the sum of $20,000.00 stipulated damages and conditioned as required by said order of date September 24th, 1927, which bond for stipulated damages was approved by this court and effected a suspension of the issuance of the writs of preliminary injunction. That by the furnishing and filing by defendants of said bond for stipulated damages, and the approval of the court thereon, the bond filed by plaintiff is and has been without effect, and the same should be cancelled and the surety thereon released.

Now Therefore your plaintiff moves the honorable court for an order ordering the cancellation of the injunction bond furnished and filed by plaintiff on September 29th, 1927, and the release of the surety therein from any and all liability thereunder, and for further and general relief.

Elton B. Hunt, W. E. Eagleton, E. Howard McCaleb,
Counsel for Plaintiff.

Order

Considering the foregoing motion, and the court being fully advised in the premises and being of the opinion that the order for preliminary injunction herein granted in plaintiff's favor has been suspended by the filing of defendants' bond for $20,000.00 stipulated damages as required by said order of date September 24th, 1927, and that the bond of $40,000.00 filed by plaintiff is and has been without force or effect.

It Is Ordered that the injunction bond of $40,000.00 filed by plaintiff here be cancelled and Fidelity and Deposit Company of Maryland, the surety thereon be released from li-
[fol. 46] ability thereon and thereunder and the injunction granted is hereby suspended.

F. E. Kennamer, Judge.

Tulsa, October 6th, 1927.

[File endorsement omitted.]

In United States District Court

Separate Answer of J. W. Colley—Filed Oct. 14, 1927.

To the Honorable Judges of the United States District Court the Northern District of Oklahoma:

Comes now the defendant, J. W. Colley, and in separate answer to the petition of the plaintiff filed herein, says:

I

That he denies each, every and all the allegations in said petition contained.

II

That he denies specifically and specially all the allegations contained in paragraphs IV, XI, XII, XIV, XVI and XVII of plaintiff's petition.

III

And for further answer defendant J. W. Colley, says that he is not now and was not at the time of the institution of this suit, associated with or interested in the business of the Magic City Kennel Club, or the business of any of the other defendants named in this suit; that he did not at the time of the institution of this suit, or does not now own any stock in the said Magic City Kennel Club; that he is in no way interested in the business or property of the said Magic City Kennel Club, or any of the defendants named in the above suit; that he hereby disclaims any right, title or interest in and to the property or rights involved in this suit and says that he does not now have any and never has had any right, title or interest in and to the property and rights involved in this suit.

Wherefore, having answered, defendant, J. W. Colley, prays to be hence discharged with his costs.

Owen, Short & Looney, Attorneys for Defendant J. W. Colley.

[File endorsement omitted.]

[fol. 47] IN UNITED STATES DISTRICT COURT

ANSWER—Filed Dec. 31, 1927

To the Honorable Judge of the United States District Court for the Northern District of Oklahoma:

Comes now the defendants, Magic City Kennel Club, a corporation, John Shaughnessy, George Hurford, and John O'Brien, and in answer to the bill of complaint filed herein, say:

I

That they deny each, every and all the allegations in said petition contained except such as are specifically admitted herein.

II

That they deny specifically and specially all the allegations contained in paragraphs numbered XI, XII, XIV, XVI and XVII of plaintiff's bill of complaint.

III

Defendants specifically admit that Magic City Kennel Club is a corporation organized and existing under and by virtue of the laws of the State of Oklahoma; that it has a regular and established place of business in the County of Tulsa and State of Oklahoma.

IV

Defendants specifically admit that John Shaughnessy, George Hurford and John J. O'Brien are inhabitants and citizens of the City of Tulsa, State of Oklahoma.

V

The defendant, Magic City Kennel Club, specifically admits that it is conducting and operating a dog racing enterprise near the City of Tulsa, in the County of Tulsa, State of Oklahoma, under the name of Magic City Kennel Club.

VI

That for answer to section VI of the bill of complaint, letters patent of the United States numbered 1379224 issued

to said Owen P. Smith on May 24th, 1921, entitled Dog Racing Amusements, is invalid because of the fact that prior to two years before the filing date of the application to the Commissioner of Patents for said letters patent, the invention covered thereby was in public use; is invalid because of the fact that prior to two years before the filing date of the application to the Commissioner of Patents for said letters patent, the invention covered thereby was a matter of distinct, positive and complete public knowledge; that prior to two years before the filing date of the appli- [fol. 48] cation to the Commissioner of Patents for said letters patent, the invention covered thereby was a matter of prior publication. The defendants further answer that the claims of the letters patent of the United States No. 1379224 issued to said Owen P. Smith on May 24th, 1921, entitled Dog Racing Amusements are invalid because they are one and all of them and each of them broadly and specifically directed to unpatentable aggregations, in that the elements recited in one, each and all of said claims of said letters patent are not so interdependently co-operative one over the other to produce a unitary result. The defendants deny the infringement of aforesaid letters patent; any and each claim thereof because as such any and each claim thereof is inoperative to the purpose of building, constructing and operating a dog racing amusement.

VII

That for answer to section VII of the bill of complaint Letters Patent numbered 1507439 issued to said Owen P. Smith on Sept. 2nd, 1924, and entitled Starting Cage for Racing Dogs is invalid because prior to two years before the filing date of the application to the Commissioner of Patents for said letters patent, the invention covered thereby was in public use; that prior to two years before the filing date of the application to the Commissioner of Patents for said letters patent the invention covered thereby was a matter of distinct, positive and complete public knowledge; that prior to two years before the filing date of the application to the Commissioner of Patents for said letters patent, the invention covered thereby was a matter of prior publication. The defendants further answer that the claims of the Letters Patent of the United States num-

bered 1507439 issued to said Owen P. Smith on Sep. 2nd, 1924, entitled starting Cage for Racing Dogs was invalid because they are one and all of them and each of them broadly and specifically directed to unpatentable aggregations, in that the elements recited in one, each and all of said claims of said letters patent are not so interdependently co-operative one over the other to produce a unitary result. The defendants deny the infringement of aforesaid letters patent; and each claim thereof because as such any and each claim thereof is inoperative to the purpose of building, constructing and operating a dog racing amusement.

VIII

That for answer to section VIII of the bill of complaint Letters Patent of the United States numbered 1507440 issued to said Owen P. Smith on Sep. 2nd, 1924, entitled Housing for Conveyor Cars and Tracks, is invalid because of the [fol. 49] fact that prior to two years before the filing date of the application to the Commissioner of Patents for said Letters Patent, the invention covered thereby was in public use; is invalid because of the fact that prior to two years before the filing date of the application to the Commissioner of Patents for said letters patent, the invention covered thereby was a matter of distinct, positive and complete public knowledge; that prior to two years before the filing date of the application to the Commissioner of Patents for said Letters Patent, the invention covered thereby was a matter of prior publication. The defendant further answers that the claims of the letters patent of the United States numbered 1507440 issued to said Owen P. Smith on Sep. 2nd, 1924, entitled Housing for Conveyor Cars and Tracks, are invalid because they are one and all of them and each of them broadly and specifically directed to unpatentable aggregations, in that the elements recited in one, each and all of said claims of said Letters Patent are not so interdependently co-operative one over the other to produce a unitary result. The defendants deny the infringement of aforesaid letters patent; any and each claim thereof because as such any and each claim thereof is inoperative to the purpose of building, constructing, and operating a dog racing amusement.

IX

That for answer to section IX of the bill of complaint letters patent of the United States numbered 1630811 issued to said Owen P. Smith on May 31st, 1927, entitled Starting Cage for Dogs Racing and the Like, is invalid because of the fact that prior to two years before the filing date of the application to the Commissioner of Patents for said letters patent, the invention covered thereby was in public use; is invalid because of the fact that prior to two years before the filing date of the application to the Commissioner of Patents for said letters patent, the invention covered thereby was a matter of distinct, positive and complete public knowledge; that prior to two years before the filing date of the application to the Commissioner of Patents for said letters patent, the invention covered thereby was a matter of prior publication. The defendant further answers that the claims of the letters patent of the United States numbered 1630811 issued to said Owen P. Smith on May 31st, 1927, entitled Starting Cage for Dog racing and the Like, are invalid because they are one and all of them and each of them broadly and specifically directed to unpatentable aggregations in that the elements recited in one, each and all of said claims of said letters patent are not so interdependently co-operative one over the other to produce a unitary result. The defendants deny the infringement of aforesaid [fol. 50] letters patent, any and each claim thereof because as such any and each claim thereof is inoperative to the purpose of building, constructing and operating a dog racing amusement.

X

That for answer to section X of the bill of complaint letters patent of the United States numbered 1630812 issued to said Owen P. Smith on May 31st, 1924, entitled Traction Car and the Like, is invalid because of the fact that prior to two years before the filing date of the application to the Commissioner of Patents for said letters patent, the invention covered thereby was in public use; is invalid because of the fact that prior to two years before the filing date of the application to the Commissioner of Patents for said letters patent, the invention covered thereby was a matter of distinct, positive and complete public knowledge;

that prior to two years before the filing date of the application to the Commissioner of Patents for said letters patent, the invention covered thereby was a matter of prior publication. The defendants further answer that the claims of the letters patent of the United States numbered 1630812 issued to said Owen P. Smith on May 31st, 1924, entitled Traction Car and the Like are invalid because they are one and all of them and each of them broadly and specifically directed to unpatentable aggregations, in that the elements recited in one, each and all of said claims of said letters patent are not so interdependently co-operative one over the other to produce a unitary result. The defendants deny the infringement of aforesaid letters patent; and any and each claim thereof because as such and each claim thereof is inoperative to the purpose of building, constructing and operating a dog racing amusement.

XI

That the defendants herein deny the infringement of the collective claims of the letters patent of the United States numbered 1379224 issued to said Owen P. Smith on May 24th, 1921, entitled Dog Racing Amusement; letters patent of the United States numbered 1507439 issued to said Owen P. Smith on September 2nd, 1924, entitled Starting Cage for Racing Dogs; letters patent of the United States numbered 1507440 issued to said Owen P. Smith on September 2nd, 1924, entitled Housing for Conveyor Cars and Tracks; letters patent of the United States numbered 1630811 issued to said Owen P. Smith May 31st, 1927, entitled Starting Cage for Dog Racing and the Like and letters patent of the United States issued to Owen P. Smith May 31st, 1927, entitled Traction Car and the Like; that the defendants for answer deny the infringement in the use of its dog racing [fol. 51] plant, apparatus, scheme or outlay, of any one or more of the claims of any one or more of each of the letters patent issued to said Owen P. Smith, numbered 1379224, on May 24th, 1921, entitled Dog Racing Amusements; letters patent of the United States numbered 1507439 issued to said Owen P. Smith on Sept. 2, 1924, entitled Starting Cage for Racing Dogs; Letters Patent of the United States numbered 1507440 issued to said Owen P. Smith on Sept. 2nd, 1924, entitled Housing for Conveyors Cars and Tracks;

Letters Patent of the United States numbered 1630811 issued to said Owen P. Smith May 31, 1927, entitled Starting Cage for Dog Racing and the Like and Letters Patent of the United States issued to said Owen P. Smith May 31, 1927, entitled Traction Cars and the Like.

XII

The defendants for answer deny the infringement on its part of any one of the claims of the Letters Patent of the United States numbered 1379224 issued to said Owen P. Smith on May 24th, 1921, entitled Dog Racing Amusements; Letters Patent of the United States numbered 1507439 issued to said Owen P. Smith on September 2nd, 1924, entitled Starting Cage for Racing Dogs; Letters Patent of the United States numbered 1507440 issued to said Owen P. Smith on September 2, 1924, entitled Housing for Conveyor Cars and Tracks; Letters Patent of the United States numbered 1,630,811 issued to said Owen P. Smith May 31st, 1927, entitled Starting Cage for Dog Racing and the Like, and letters patent of the United States issued to said Owen P. Smith May 31st, 1927, entitled Traction Cars and the Like, because in the projection of *an* prosecution of a dog racing plant or track it is impossible to infringe any one claim of said patents or any one claim of each of said patents.

XIII

That defendants deny that the patents issued to said Owen P. Smith numbered 1379224 on May 24th, 1921, entitled Dog Racing Amusements; Letters Patent issued to said Owen P. Smith numbered 1507493 on September 2, 1924, entitled Starting Cage for Racing Dogs; Letters Patent of the United States numbered 1507440 issued to said Owen P. Smith on September 2, 1924, entitled Housing for Conveyor Cars and Tracks, letters patent of the United States numbered 1630811 issued to said Owen P. Smith May 31, 1927, entitled Starting Cage for Dog Racing and the Like, and Letters Patent of the United States issued to Owen P. Smith May 31st, 1927, entitled Traction Cars and the Like, are generic patents in that any one *of* all of the claims of each of said patents separately or collectively [fol. 52] considered are generic in the art of dog racing but

that each claim of each patent separately and in the several patents collectively are highly specific each and all of them in themselves and are predicated and highly specified specifications forming a part of each patent and limiting each and all of said claims of each and all of said patents substantially to the drawings accompanying and forming a part of each and all of the aforesaid Letters Patent.

XIV

That the defendants deny the infringement of each of the letters patent of the United States numbered 1379224 issued to said Owen P. Smith on May 24th, 1921, entitled Dog Racing Amusements, Letters Patent of the United States numbered 1507439 issued to said Owen P. Smith on September 2nd, 1924, entitled Starting Cage for Racing Dogs, Letters Patent of the United States numbered 1507-440 issued to said Owen P. Smith on September 2nd 1924, entitled Housing for Conveyor Cars and Tracks, letters patent of the United States numbered 1630811 issued to said Owen P. Smith May 31, 1927, entitled Starting cage for Dogs and the like, and letters patent of the United States numbered 1630812 issued to said Owen P. Smith May 31st, 1927, entitled Traction Cars and the Like, of any claim of each of said aforesaid patents for the reason hereinbefore set forth and for the further reason that one of the defendants herein John L. Shaughnessy is possessed of rights, titles and interest and to certain Letters Patent of the United States for disappearing Rabbits for dog races issued to him and to an assignee in the name of James V. Mondi of Chicago, Illinois, on May 10th, 1927, and numbered 1628515. That the defendants show for answer, a right granted subsequently to the rights of the Smith Patents aforementioned, to the use of a mechanical lure projectable along a race track by high powered motor and carried by a movable arm projecting through a slot or runway to the side of a depressed housing properly tracked for the projection of said motor.

XV

The defendants for denial of infringement show that during the pendency of the application in the United States

Patent Office of the said letters patent to John L. Shaughnessy numbered 1628518 that the prior art insofar as it consisted of the United States Letters Patent numbered 1379224 issued to Owen P. Smith, on May 24th, 1921, entitled Dog Racing Amusements, Letters Patent of the United States numbered 1507439 issued to Owen P. Smith on September 2nd, 1924, entitled Starting Cage for Racing Dogs, Letters Patent of the United States number 1507440 [fol. 53] issued to Owen P. Smith on September 2nd, 1924, entitled Housing for Conveyor of Cars and Tracks, do not constitute any of the prior art cited by the honorable primary examiner for the Commissioner of Patents during the prosecution of the application of said Shaughnessy patent.

XVI

Defendants answer further and deny the infringement of the aforesaid letters patent because of its right to operate a dog racing amusement under said letters patent issued to John L. Shaughnessy numbered 1628518 May 10th, 1927, the application for which was before the United States Commissioner of Patents for the aforesaid Letters Patent, during the pendancy of the application for letters patent of said Owen P. Smith, which resulted in Letters Patent numbered 1630811 and 1630812 both issued on May 31st, 1927.

Further answering defendant, and each of them say: that Owen P. Smith, on or before November 22nd, 1920, sold and conveyed the right to use his patent upon dog racing amusement devices, mechanical lure conveyor, and all improvements thereupon which he might thereafter make, and the patent right thereupon, for the State of Oklahoma, for a good and valuable consideration; that the said Owen P. Smith has not reacquired the same, nor has his estate.

Wherefore defendants respectfully submit to the court that the plaintiff, as administratrix of the estate of Owen P. Smith, deceased, is without authority to maintain this suit against the defendants, or any of them, since said Owen P. Smith has heretofore, for good and valuable consideration, sold and conveyed the right to use his patents in the State of Oklahoma; and defendants pray that this action be dis-

missed and that they and each of them be discharged therefrom and go hence with their costs.

George F. Short, Owen, Short and Looney, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 54] In United States District Court

Order Granting Leave to Amend Answer—Filed Dec. 31, 1927

The above-entitled cause coming before the court on request of counsel for the defendant for leave to amend defendants' answer, and it appearing that such request is a reasonable one, leave is hereby granted for the amendment, and the defendants required to serve a copy of their amended answer upon counsel for the plaintiff on or before February 1, 1928.

F. E. Kennamer, Judge United States District Court.

[File endorsement omitted.]

In United States District Court

Patent Nos. 1,379,224, 1,507,439, 1,507,440, 1,630,811, 1,630,812

Joint and Several Amended Answer of Defendants, John Shaughnessy, George Hurford, John J. O'Brien, J. W. Colley—Filed Jan. 27, 1928

Now comes the defendants, John Shaughnessy, George Hurford, John J. O'Brien and J. W. Colley, and for answer to plaintiff's Bill of Complaint say:

First, These defendants are not informed save by said Bill of Complaint, as to whether or not the plaintiff is the widow of Owen P. Smith, deceased, a resident of the County of Dade and State of Florida, and a citizen of the United States and the State of Florida; as to the death of the said Owen P. Smith, the time and place of his death, his resi-

dence and citizenship at the time of his death, or as to any proceedings for the administration of his estate; as to the appointment or qualification of the plaintiff as administratrix of his estate or as to any acts performed by the plaintiff as administratrix of said estate, and therefore deny the same, and deny each and every allegation made in paragraph numbered 1 of plaintiff's Bill of Complaint.

Second. These defendants admit that they, John Shaughnessy, George Hurford, John J. O'Brien and J. W. Colley, are inhabitants and citizens of Tulsa County, Oklahoma, but deny that they have a regular and established place of business at and with the defendant, Magic City Kennel Club; that they, or any of them, are conducting and operating a dog racing enterprise near the City of Tulsa, in the County of Tulsa, State of Oklahoma, and that they have a regular and established place of business in or near the said City of Tulsa, and near a public highway, in said [fol. 55] County of Tulsa and State of Oklahoma, for the purpose of carrying on any racing enterprise under the name of the Magic City Kennel Club, and defendants deny each and every allegation contained in paragraphs numbered III and IV of plaintiff's Bill of Complaint.

Third. These defendants admit issuance to Owen P. Smith of the following Letters Patent of the United States, to wit:

1,379,224, May 24, 1921, "Improvement in Dog Racing Amusements."

1,507,439, September 2, 1924, "Improvement in Starting Cages for Racing Dogs."

1,507,440, September 2, 1924, "Improvement in Housings for Conveyor Cars and Tracks."

1,630,811, May 31, 1927, "Improvement in Starting Cages for Dog Racing and the Like."

1,630,812, May 31, 1927, "Improvement in Traction Cars and the Like."

but deny that the said Owen P. Smith was the original, first and sole inventor of the alleged improvements set forth in said letters patent, or any of them, or that said alleged inventions or improvements were not known or used in this country before his alleged invention thereof, or patented or described in any printed publication anywhere before his

alleged invention thereof, or for more than two years prior to his applications for letters patent therefore respectively, or in public use or on sale in this country for more than two years before his said applications were filed, or patented in any foreign country by him and or by his legal representatives or assigns on any application or applications made by them more than twelve months before his said applications for patent in this country, and was not abandoned. As to whether or not the said Owen P. Smith complied with all statutory requirements necessary in the filing and prosecution of said applications for letters patent, and as to whether or not all statutory requirements were complied with in the issuance of said letters patent, and as to whether or not devices embodying the teaching of said letters patent made, used or sold by the said Owen P. Smith, and by said plaintiff, have been marked patented, or with suitable abbreviations thereof, together with the dates of said patents, these defendants are not informed, save by said Bill of Complaint, and pray that due proof may be made thereof.

Fourth. As to whether or not the plaintiff is now, or ever was, owner of the legal title to said letters patent, or [fol. 56] any of them, these defendants are not informed, save by said Bill of Complaint, and therefore deny the same, and deny that the plaintiff has such ownership in said letters patent as the law requires for the enforcement thereof against manufacturers and users of said improvements within the State of Oklahoma, and allege the fact to be, that the said Owen P. Smith parted with all right to the manufacture and use of said alleged improvements within the State of Oklahoma long prior to the acquisition of title or ownership therefor alleged by the plaintiff in her bill of complaint.

Fifth. As to whether or not said alleged inventions or improvements described and claimed in said letters patent are capable of conjoint, as well as separate use, and as to whether or not the same have been used conjointly and separately by said Owen P. Smith, or by the plaintiff, or either of them, within the United States, these defendants are not informed, save by said Bill of Complaint, and therefore deny the same, and deny that said alleged inventions or improvements, or any of them, have been used conjointly and separately by these defendants, or that others have co-

operated with, aided or abetted these defendants in the use of said alleged inventions or improvements near the City of Tulsa, County of Tulsa and State of Oklahoma.

Sixth. These defendants deny that they have made or caused to be made, or have used or caused to be used, apparatus and devices embodying the subject matter of the claims of said letters patent herein listed, or any of them, and that these individual defendants, or any of them, have been associated with the defendant, Magic City Kennel Club, in the conduct of any enterprise, and defendants further deny that they have infringed upon said letters patent, or any of them, are continuing such infringement, or threatening to continue the same, and further deny that they have damaged the plaintiff in any way, or have derived profit from any enterprise, or otherwise, which rightfully belongs to the plaintiff.

Seventh. As to whether or not the plaintiff and the said Owen P. Smith have, particularly from the month of February, 1921, and up to the present time, made, used and sold the alleged invention or inventions covered by the letters patent Nos. 1,379,224; 1,507,439; and 1,507,440, and as to whether or not any person other than the said Owen P. Smith, or his representatives and licensees, had, prior to the autumn of the year 1925, assumed to make, use or sell devices embodying said alleged invention or inventions, or any of them, and as to whether or not for several years, and [fol. 57] prior to the autumn of the year 1925, all persons other than the said Owen P. Smith, and his authorized agents, or licensees, refrained from using the alleged invention or inventions covered by said letters patent for any reason, or as to whether or not it would have been to the interest of third persons to adopt and employ such alleged invention or inventions, or that there had been a general public acquiescence in the novelty and validity of said letters patent, or as to the extent of expenditure by the said Owen P. Smith, or his associates, agents or licensees, in carrying on the alleged invention or inventions covered by said letters patent and introducing the said invention or inventions into gainful use, or as to the exclusiveness of the use by said Owen P. Smith of the said alleged invention or inventions, particularly from the year 1921, until the fall of the year 1925, these defendants are not informed save by

said Bill of Complaint, and pray that due proof may be made thereof.

Eighth. These defendants admit that John Shaughnessy, one of the individual defendants named in plaintiff's bill of complaint, was, prior to the year 1927, actually engaged in association with the said Owen P. Smith in the operation of a dog racing track near the City of Tulsa, in the County of Tulsa and State of Oklahoma, but deny that the said John Shaughnessy was there employed by the said Owen P. Smith, and allege the fact to be that both the said John Shaughnessy and the said Owen P. Smith were employed by a person or concern to whom the said Owen P. Smith had granted rights under his alleged invention or inventions for the State of Oklahoma, and that the said John Shaughnessy in the course of said employment co-operated with the said Owen P. Smith in the development of improvements in dog racing apparatus and devices, and in the operation thereof on behalf of the licensee of the said Owen P. Smith as aforesaid. These defendants deny that the said John Shaughnessy, in the early part of the year 1927, or at any other time, entered into a wrongful conspiracy with the defendant, Magic City Kennel Club, or said defendant and others, to commit or cause to be committed, any unlawful act, or any act constituting an invasion of the rights of the plaintiff, or any predecessors of the plaintiff, embodying the alleged invention or inventions of the several letters patent herein named, or that the incorporation of the defendant, Magic City Kennel Club, was the result of any such conspiracy, or that operation of the dog racing enterprise conducted by the defendant, Magic City Kennel Club, is controlled by the said John Shaughnessy, as a result of such a conspiracy, or that the defendant, Magic City [fol. 58] Kennel Club, is a cloak or shield for any individual or individuals, and these defendants deny each and every allegation contained in paragraph numbered XIV of plaintiff's Bill of Complaint, except those herein specifically admitted.

Ninth. These defendants deny that should a decree be entered against the defendant, Magic City Kennel Club, in accordance with the prayers of the Bill of Complaint, the same would not afford a complete and adequate protection of any rights of the plaintiff under the aforesaid letters

patent, and deny that any partnership exists between them, or any of them, and the defendant, Magic City Kennel Club, that these defendants, or any of them, are engaged in any unlawful acts and doings, either alone or in connection with the defendant, Magic City Kennel Club, or are threatening to engage in any such unlawful acts, or that these defendants have conspired to damage and injure the said Owen P. Smith and the plaintiff, or that the defendant, Magic City Kennel Club, was organized to further the purpose of these defendants, or any of them, in infringing said letters patent aforesaid, or that these defendants have gained, or are about to gain, large profits from any acts in such regard, or that these defendants have derived profits rightfully belonging to the plaintiff, or that these defendants have caused plaintiff damage by any such act, or acts.

Tenth. These defendants deny that they have contrived to injure the plaintiff and deprive the plaintiff, or her predecessors in interest in the said letters patent, of the benefits and advantages which might accrue unto her, or have accrued unto her, or her predecessors, from said letters patent for the several said alleged inventions, after issue of said letters patent as aforesaid, and before the commencement of this suit, or that they have without the license or allowance, and against the will of this plaintiff and her predecessors in interest in said letters patent, and in violation of plaintiff's rights and in infringement of said letters patent, and particularly of claims 1 and 2 of patent No. 1,379,224, and of claims 1, 2 and 3 of patent No. 1,507,440 and of the claim or claims of patents numbered 1,507,439, 1,630,811 and 1,630,812 near the City of Tulsa, County of Tulsa, State of Oklahoma, or elsewhere in the United States, unlawfully and wrongfully and in defiance of the rights of the plaintiff, made, constructed, used or vended to others to be used, the said alleged invention or inventions, or that they did make, use or vend to others to be used, machines and devices made according to and employed and containing said alleged invention or inventions, or are con-
[fol. 59] tinuing so to do; and these defendants deny that they are threatening to make the aforesaid alleged infringing machines and devices, or to sell the same, or to cause loss or injury to the plaintiff, or that the plaintiff is being

deprived of any gains or profits which she might have attained but for acts of these defendants, or that these defendants have received and enjoyed gains and profits rightfully belonging to said plaintiff.

Eleventh. These defendants deny notice from the plaintiff of any alleged infringement of any rights of the plaintiff, and of having disregarded any such notice, or that they are continuing to make, use and sell machines and devices embodying the subject matter of said several letters patent.

Twelfth. As an additional and separate defense in their behalf these defendants allege that the allegations set forth in plaintiff's bill of complaint are not sufficient in equity to support the joinder of the individual defendants named therein with the defendant, Magic City Kennel Club, Incorporated.

Thirteenth. These defendants aver that the alleged improvements set forth in said letters patent Nos. 1,379,224; 1,507,439, 1,507,440; 1,630,811 and 1,630,812, and each of them, and particularly pointed out in the claims thereof, were not novel and patentable when produced by the said Owen P. Smith but that devices and apparatus identical or substantially similar in construction with those disclosed and described in said letters patent, and pointed out in the claims thereof, had been previously patented and described in the following letters patent of the United States and foreign countries:

United States

Number	Date of Issue	Inventor
219,039	August 26, 1879	Isaac Towell.
245,414	August 9, 1881	Isaac Towell.
362,396	May 3, 1887	Joseph A. Pinard.
418,373	December 31, 1889	Hosea W. Libbey
156,818	July 28, 1891	William S. Herrington
473,177	April 19, 1892	William E. Meissner
484,436	October 18, 1892	Alfred T. Kelliher
488,765	December 27, 1892	Alfred T. Kelliher
512,654	January 9, 1894	Alexander L. Leonard
529,162	November 13, 1894	Josiah B. Dodge
529,737	November 27, 1894	Thomas J. Shorb
529,987	November 27, 1894	Samuel B. Whitehead
542,090	July 16, 1895	Robert Steel
[fol. 60]		
543,762	July 30, 1895	James T. Andrew
553,709	January 28, 1896	Moses L. Wood

United States (Continued)

Number	Date of Issue	Inventor
579,158	March 23, 1897	Morris C. Menzies
583,109	May 25, 1897	James W. Daniels
588,764	June 1, 1897	Andrew McGill
598,805	February 15, 1898	Joseph Bell
611,876	October 4, 1898	Michael Walsh
631,883	August 29, 1899	Larkin Stowe
647,160	April 10, 1900	Samuel Stedeker
717,798	January 6, 1903	Benjamin Beerwald
729,120	May 26, 1903	Gustav Bertram
731,347	June 16, 1903	Alphonse J. Esende
737,257	August 25, 1903	Gerardo Majno
748,591	January 5, 1904	Henry F. Duffy
750,140	January 19, 1904	John H. Welsh
789,973	May 16, 1905	Gustave K. Hartung
811,284	January 30, 1906	Thomas F. Gaynor
816,081	March 27, 1906	Willis M. Elder, et al.
826,758	July 24, 1906	Charles F. Weidner
834,016	October 23, 1906	Louis B. May
845,459	February 26, 1907	James M. Gilstrap
853,808	May 14, 1907	Robert F. Rice
855,492	June 4, 1907	John S. Alexander
855,670	June 4, 1907	Ferdinand C. Roberts, et al.
868,020	October 15, 1907	David Stitzer.
869,356	October 29, 1907	Wilhelm Fiedler.
878,106	February 4, 1908	Benjamin F. Wooding.
881,505	March 10, 1908	William H. Vance.
881,637	March 10, 1908	William S. VanSant.
883,441	March 31, 1908	Albert G. Andrews.
886,027	May 5, 1908	Henry O. Neebe.
920,346	May 4, 1909	Ferdinand Kronenberger.
942,041	November 30, 1909	Charles W. Ott.
943,539	December 14, 1909	Walter Harling.
952,242	March 15, 1910	Andrew B. Foans.
953,259	March 29, 1910	George A. Krueger, et al.
963,768	July 26, 1910	William S. VanSant.
969,405	September 6, 1910	Henry L. Ferris, et al.
993,259	May 23, 1911	Candy Lewellen.
995,173	June 13, 1911	Sigmund Penzo.
1,018,931	February 27, 1912	Robert F. Scott, et al.
1,019,621	March 5, 1912	Joseph W. Fawkes, et al.
1,021,283	April 2, 1912	Ova M. Ricks.
1,038,504	September 10, 1912	Owen P. Smith.
1,052,807	February 11, 1913	Percy Everett.

[fol. 61]

1,088,338	February 24, 1914	William C. Farnum.
1,108,794	August 25, 1914	William Say.
1,112,060	September 29, 1914	Emil Erdmann.
1,133,023	March 30, 1915	Leopold Dreifuss.
1,165,898	December 28, 1915	Charles F. Peck.
1,228,011	May 29, 1917	John A. Fisher.
1,370,385	March 1, 1921	Morris Unger.
1,379,224	May 24, 1921	Owen P. Smith.
1,398,639	November 29, 1921	Ernest Kohler.
1,399,582	December 6, 1921	James Sayth.
1,410,482	March 28, 1922	Owen P. Smith.
1,472,359	April 17, 1923	Frank T. Wakefield.
1,481,313	January 22, 1924	William C. Crevelling.

Great Britain

Number	Date of Issue	Inventor
4274	September 5, 1883	William E. Hind.
9058	April 29, 1896	Stephen E. Moss.
20,916	June 19, 1899	Michael Walsh.
2586	January 31, 1903	Hugh Cowley.
26,815	December 8, 1903	Robert R. Thom.

Fourteenth. These defendants aver that the alleged improvements described in said Letters Patent Nos. 1,379,224; 1,507,439; 1,507,440; 1,630,811 and 1,630,812, and particularly pointed out in the claims thereof, are not in view of the prior state of the art, as exemplified in the Letters Patent of the United States and foreign countries mentioned in the foregoing paragraph of defendants' answer, of that dignity which the law requires to support the grant of Letters Patent, but on the contrary merely discloses constructions and combinations of elements which anyone skilled in the art to which the same pertains would be capable of and expected to produce in the exercise of the ordinary skill of his calling.

Fifteenth. These defendants aver that in view of the state of the art as it existed at and prior to the making of said alleged improvements described and claimed in said Letters Patent Nos. 1,379,224; 1,507,439; 1,507,440, 1,630,811 and 1,630,812, in view of conditions and limitations which must be imposed on the claims of said Letters Patent in the light of the specifications and drawings forming part of said Letters Patent, and of the proceedings in the Patent Office pending the application for said Letters Patent, the claims of said Letters Patent cannot be lawfully and properly construed to cover and embrace any apparatus or de- [fol. 62] vices except those of the specific form and structure illustrated and described in detail in said Letters Patent.

Sixteenth. These defendants aver upon information and belief that the claims of the said Letters Patent of the United States Nos. 1,379,224; 1,507,439; 1,507,440; 1,630,811 and 1,630,812, do not cover any valid or patentable combinations, but embrace mere aggregations of elements, that they do not cover or embody any patentable subject matter, and that they are not patentable according to the statutes and laws of the United States.

Seventeenth. These defendants therefore deny that the plaintiff is entitled to the relief prayed in the bill of complaint, or any part thereof, and pray that the same be dismissed, and that these defendants recover their costs in this behalf most wrongfully sustained.

John Shaughnessy, George Hurford, John J. O'Brien, J. W. Colley, Defendants, by Arthur C. Brown and Carroll & Jameson, Solicitors and of Counsel for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SEPARATE AND AMENDED ANSWER OF THE DEFENDANT MAGIC CITY KENNEL CLUB, INC.—Filed Jan. 27, 1928

Now comes the defendant, Magic City Kennel Club, Incorporated, and for answer to plaintiff's bill of complaint, says:

First: That it is not informed save by said bill of complaint, as to whether or not the plaintiff is the widow of the said Owen P. Smith, deceased, a resident of the County of Dade and State of Florida, and a citizen of the United States and the State of Florida; as to the death of the said Owen P. Smith, the time and place of his death, his residence and citizenship at the time of his death, or as to any proceedings for the administration of his estate; as to the appointment or qualification of the plaintiff as administratrix of his estate, or as to any acts performed by the plaintiff as administratrix of said estate, and therefore denies the same, and denies each and every allegation made in paragraph numbered 1 of plaintiff's bill of complaint.

[fol. 63]

Second. Defendant admits that it is a corporation organized and existing under and by virtue of the laws of the State of Oklahoma, domiciled and having a regular place of business in Tulsa County, Oklahoma, and that it is an inhabitant and resident of said county and a citizen of the State of Oklahoma.

Third. As to whether or not John Shaughnessy, George Hurford, John J. O'Brien and J. W. Colley are inhabitants and citizens of Tulsa County, Oklahoma, this defendant is uninformed, save by said bill of complaint, and therefore denies the same, and denies that the said John Shaughnessy, George Hurford, John J. O'Brien and J. W. Colley have a regular and established place of business at and with this defendant, that said individual defendants, or any of them, are conducting and operating a dog racing enterprise near the City of Tulsa in the County of Tulsa, State of Oklahoma, and that they have a regular and established place of business in or near the said City of Tulsa, and near a public highway, in said County of Tulsa and State of Oklahoma, for the purpose of carrying on said dog racing enterprise under the name of the Magic City Kennel Club, and defendant denies each and every allegation contained in paragraphs numbered III and IV of plaintiff's bill of complaint.

Fourth. Defendant admits issuance to the said Owen P. Smith of the following Letters Patent of the United States, to-wit:

1,379,224, May 24, 1921, "Improvement in dog racing amusements."

1,507,439, September 2, 1924, "Improvement in starting cages for racing dogs."

1,507,440, September 2, 1924, "Improvement in housings for conveyor cars and trucks."

1,630,811, May 31, 1927, "Improvement in starting cages for dog racing and the like."

1,630,812, May 31, 1927, "Improvement in traction cars and the like."

but denies that the said Owen P. Smith was the original, first and sole inventor of the alleged improvements set forth in said Letters Patent, or any of them, or that said alleged inventions or improvements were not known or used in this country before his alleged invention thereof, [fol. 41] or patented or described in any printed publication anywhere before his alleged invention thereof, or for more than two years prior to his applications for Letters Patent therefor respectively, or in public use or on sale in this country for more than two years before his

said applications were filed, or patented in any foreign country by him and/or by his legal representatives or assigns on any application or applications made by them more than twelve months before his said applications for patent in this country, and was not abandoned. As to whether or not the said Owen P. Smith complied with all statutory requirements necessary in the filing and prosecution of said application for Letters Patent, and as to whether or not all statutory requirements were complied with in the issuance of said Letters Patent, and as to whether or not devices embodying the teaching of said Letters Patent made, used or sold by the said Owen P. Smith, and by said plaintiff, have been marked patented, or with suitable abbreviations thereof, together with the dates of said patents, this defendant is not informed save by said bill of complaint, and prays that due proof may be made thereof.

Fifth. As to whether or not the plaintiff is now, or ever was, owner of the legal title to said Letters Patent, or any of them, this defendant is not informed, save by said bill of complaint, and therefore denies the same, and defendant denies that the plaintiff has such ownership in said Letters Patent as the law requires for the enforcement thereof against manufacturers and users of said improvements within the State of Oklahoma, and alleges the fact to be, that the said Owen P. Smith parted with all right to the manufacture and use of said alleged improvements within the State of Oklahoma long prior to the acquisition of title or ownership thereof alleged by the plaintiff in her bill of complaint.

Sixth. As to whether or not said alleged inventions or improvements described and claimed in said Letters Patent are capable of conjoint, as well as separate use, and as to whether or not the same have been used conjointly and separately by said Owen P. Smith, or by the plaintiff, or either of them, within the United States, this defendant is not informed save by said bill of complaint, and therefore denies the same, and defendant denies that said alleged inventions or improvements, or any of them, have been used conjointly and separately by this defendant or that others have co-operated with, aided or abetted this defendant in the

use of said alleged inventions or improvements near the City of Tulsa, County of Tulsa and State of Oklahoma.

[fol. 65] Seventh. Defendant admits that it is engaged in the business of conducting a dog racing enterprise for public entertainment near the City of Tulsa, County of Tulsa and State of Oklahoma, but denies that in conducting such enterprise it has made or caused to be made, or has used or caused to be used, apparatus and devices embodying the subject matter of the claims of said Letters Patent herein listed, or any of them, and that the individual defendants named in plaintiff's bill of complaint, or any of them, have been associated with this defendant in the conduct of said enterprise, and defendant further denies that it has infringed upon said Letters Patent, or any of them, is continuing such infringement, or threatening to continue the same, and defendant further denies that it has damaged the plaintiff in any way, or has derived profit from such enterprise, or otherwise, which rightfully belongs to the plaintiff.

Eighth. As to whether or not the plaintiff and the said Owen P. Smith have, particularly from the month of February, 1921, and up to the present time, made, used and sold the alleged invention or inventions covered by the Letters Patent Nos. 1,379,224; 1,507,439 and 1,507,440, and as to whether or not any person other than the said Owen P. Smith, or his representatives and licensees, had, prior to the autumn of the year, 1925, assumed to make, use or sell devices embodying said alleged invention or inventions, or any of them, and as to whether or not for several years, and prior to the autumn of the year, 1925, all persons other than the said Owen P. Smith, and his authorized agents or licensees, refrained from using the alleged invention or inventions covered by said Letters Patent for any reason, or as to whether or not it would have been to the interest of third persons to adopt and employ such alleged invention or inventions, or that there had been a general public acquiescence in the novelty and validity of said Letters Patent, or as to the extent of expenditure by the said Owen P. Smith, or his associates, agents or licensees, in carrying on the alleged invention or inventions covered by said Letters Patent and introducing the said in-

vention or inventions into gainful use, or as to the exclusiveness of the use by said Owen P. Smith of the said alleged invention or inventions, particularly from the year 1921 until the fall of the year 1925, this defendant is not informed save by said bill of complaint, and prays that due proof may be made thereof.

Ninth. Defendant admits that John Shaughnessy, one of the individual defendants named in plaintiff's bill of complaint, was, prior to the year 1927, actually engaged in [fol. 66] association with the said Owen P. Smith in the operation of a dog racing track near the City of Tulsa, in the County of Tulsa and State of Oklahoma, but denies that the said John Shaughnessy was there employed by the said Owen P. Smith, and alleges the fact to be that both the said John Shaughnessy and the said Owen P. Smith were employed by a person or concern to whom the said Owen P. Smith had granted rights under his alleged invention or inventions for the State of Oklahoma, and that the said John Shaughnessy in the course of said employment co-operated with the said Owen P. Smith in the development of improvements in dog racing apparatus and devices, and in the operation thereof on behalf of the licensee of said Owen P. Smith as aforesaid. Defendant denies that the said John Shaughnessy in the early part of the year 1927, or at any other time, entered into a wrongful conspiracy with this defendant, or this defendant and others, to commit or cause to be committed, any unlawful act, or any act constituting an invasion of the rights of the plaintiff, or any predecessors of the plaintiff, embodying the alleged invention or inventions of the several Letters Patent herein named, or that the incorporation of this defendant was the result of any such conspiracy, or that operation of the dog racing enterprise of this defendant is controlled by the said John Shaughnessy, as a result of such a conspiracy, or that this defendant is a cloak or shield for any individual or individuals, and defendant denies each and every allegation contained in paragraph numbered XIV of plaintiff's bill of complaint, except those herein specifically admitted.

Tenth. Defendant denies that should a decree be entered against this defendant in accordance with the prayers of the bill of complaint, the same would not afford a complete and adequate protection of any rights of the plaintiff under

the aforesaid Letters Patent. Defendant denies that any partnership exists between it and the individual defendants named in plaintiff's bill of complaint, or any of them; that this defendant is engaged in any unlawful acts and doings, either alone or in connection with said individual defendants, or any of them, or is threatening to engage in any such unlawful acts, or that this defendant has conspired to damage and injure the said Owen P. Smith and the plaintiff, or that this defendant was organized to further the purpose of said individual defendants, or any of them, in infringing said Letters Patent aforesaid, or that this defendant has gained, or is about to gain, large profits from its sole or any joint acts in such regard, or that this defendant has derived profits rightfully belonging to the plaintiff, or that this defendant has caused plaintiff damage by any such act, or acts.

(fol. 67) Eleventh: This defendant denies that it has contrived to injure the plaintiff and deprive the plaintiff, or her predecessors in interest in the said Letters Patent, of the benefits and advantages which might accrue unto her, or have accrued unto her, or her predecessors, from said Letters Patent for the several said alleged inventions, after issue of said Letters Patent as aforesaid, and before the commencement of this suit, or that it has, without the license or allowance and against the will of this plaintiff and of her predecessors in interest in said Letters Patent, and in violation of plaintiff's rights and in infringement of said Letters Patent, and particularly of claims 1 and 2 of patent No. 1,557,224 and of claims 1, 2 and 3 of patent No. 1,507,439, and of the [illegible] claims of patents numbered 1,507,439, 1,630,811 and 1,630,812, near the City of Tulsa, County of Tulsa, State of Oklahoma or elsewhere in the United States, [illegible] and wrongfully and in defiance of the rights of the plaintiff, made constructed, used or vended to others to be used, the said alleged invention or inventions, or [illegible] sold, or vend to others to be used, machines and devices made according to and employing and containing said alleged invention or inventions, or is continuing so to do; and defendant denies that it is threatening to make the aforesaid alleged infringing machines and devices, or to sell the same, or to cause loss or injury to the plaintiff, or that the plaintiff is being deprived

of any gains or profits which she might have attained but for acts of this defendant, or that this defendant has received and enjoyed gains and profits rightfully belonging to said plaintiff.

Twelfth. Defendant denies knowledge from the plaintiff of any alleged infringement of any right of the plaintiff, and of having disregarded any such notice, or that it is continuing to make, use and sell machines and devices embodying the subject matter of said several Letters Patent.

Thirteenth. As an additional and separate defense in its behalf this defendant alleges that the allegations set forth in plaintiff's bill of complaint [illegible] in equity to support the joinder of the individual defendants named therein with the defendant [illegible] Knitted Club, Incorporated.

Fourteenth. This defendant denies that the alleged improvements set forth and [illegible] Letters Patent Nos. 1,273,224; 1,307,439; 1,307,440; 1,307,441; 1,307,811 and 1,330,812, and each of them, and particularly pointed out in the claims thereof, were not [illegible] and patentable as contemplated by the said [illegible] Owen P. Smalley, that devices and apparatus identical or substantially identical to those disclosed and described in said Letters Patent, and pointed out in the claims thereof, were well known and described in the literature [illegible] Patents of the United States and foreign countries.

Number	Date of Issue	Inventor
219,029	August 26, 1879	[illegible]
245,414	August 9, 1881	[illegible]
262,286	May 2, 1882	Joseph A. Pinard
418,233	December 31, 1889	Henry W. Fisher
446,515	Feb. 28, 1891	William S. Herrick
453,137	April 19, 1891	William E. McKenzie
484,430	October 18, 1892	Alfred T. Kelliher
488,765	December 27, 1892	Alfred T. Kelliher
512,054	January 2, 1894	Alexander L. Leonard
529,182	November 13, 1894	Josiah R. Dodge
529,733	November 27, 1894	Thomas J. Shorb
529,987	November 27, 1894	Samuel B. Whitehead
542,980	July 16, 1895	Robert Steel
543,762	July 30, 1895	James T. Andrew
553,709	January 28, 1896	Moses L. Wood
579,158	March 23, 1897	Morris C. Mengis
583,109	May 25, 1897	James W. Daniels
583,764	June 1, 1897	Andrew McGill
598,895	February 15, 1898	Joseph Bell

Number	Date of Issue	Inventor
611,876	October 4, 1898	Michael Walsh
631,883	August 29, 1899	Larkin Stowe
647,166	April 10, 1900	Samuel Stedeker
717,798	January 6, 1903	Benjamin Beerwald
729,121	May 26, 1903	Gustav Bertram
731,317	June 16, 1903	Alphonse J. Escude
737,256	August 25, 1903	Gerardo Majno
748,591	January 5, 1904	Henry F. Duffy
750,140	January 19, 1904	John H. Welsh
789,973	May 16, 1905	Gustave K. Hartung
811,284	January 30, 1906	Thomas F. Gaynor
816,081	March 27, 1906	Willis M. Ebler, et al.
826,758	July 24, 1906	Charles F. Weidner
834,016	October 23, 1906	Louis B. May
845,459	February 26, 1907	James M. Gilstrap
853,808	May 14, 1907	Robert F. Rice
855,492	June 4, 1907	John S. Alexander
856,670	June 4, 1907	Ferdinand C. Roberts, et al.
868,020	October 15, 1907	David Stitzer.

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869,356	October 29, 1907	Wilhelm Fiedler.
878,108	February 4, 1908	Benjamin F. Wooding.
881,505	March 10 1908	William H. Vance.
881,637	March 10, 1908	William S. VanSant.
883,441	March 31, 1908	Albert G. Andrews.
886,627	May 5, 1908	Henry O. Neebe.
920,346	May 4, 1909	Ferdinand Kronenberger.
942,041	November 30, 1909	Charles W. Ott.
943,539	December 14, 1909	Walter Harling.
952,242	March 15, 1910	Andrew B. Foams.
953,299	March 29, 1910	George A. Krueger, et al.
965,765	July 26, 1910	William S. VanSant.
969,465	September 6, 1910	Henry L. Ferris, et al.
993,259	May 23, 1911	Candy Lewellen.
995,173	June 13, 1911	Sigmund Pongo.
1,018,931	February 27, 1912	Robert F. Scott, et al.
1,019,621	March 5, 1912	Joseph W. Fawkes, et al.
1,021,283	April 23, 1912	Alva M. Ricks.
1,038,504	September 10, 1912	Owen P. Smith.
1,052,807	February 11, 1913	Percy Everett.
1,088,558	February 24, 1914	William C. Farnum.
1,108,794	Augut 25, 1914	William Say.
1,112,030	September 29, 1914	Emil Erdmann.
1,133,623	March 30, 1915	Leopold Dreifuss.
1,165,898	December 28, 1915	Charles E. Peck.
1,228,011	May 29, 1917	John A. Fisher.
1,370,385	March 1, 1921	Morris Unger.
1,379,221	May 24, 1921	Owen P. Smith.
1,398,629	November 29, 1921	Ernest Kohler.
1,399,582	December 6, 1921	James Sayih.
1,410,842	March 28, 1922	Owen P. Smith.
1,452,359	April 17, 1923	Frank T. Wakefield.
1,481,313	January 22, 1924	William C. Crevelin.

Great Britain

1274	September 5, 1883	William E. Hind.
9058	April 29, 1896	Stephen E. Moss.
20,916	June 19, 1899	Michael Walsh.
2896	January 31, 1903	Hugh Cowley.
26,815	December 8, 1903	Robert R. Thom.

Fifteenth. This defendant avers that the alleged improvements described in said Letters Patent Nos. 1,379,224; 1,507,439; 1,507,440; 1,630,811 and 1,630,812, and particu-
[fol. 70] larly pointed out in the claims thereof, are not, in view of the prior state of the art, as exemplified in the Letters Patent of the United States and foreign countries mentioned in the foregoing paragraph of defendant's answer, of that dignity which the law requires to support the grant of Letters Patent, but on the contrary merely disclose constructions and combinations of elements which anyone skilled in the art to which the same pertains would be capable of and expected to produce in the exercise of the ordinary skill of his calling.

Sixteenth. This defendant avers that in view of the state of the art as it existed at and prior to the making of said alleged improvements described and claimed in said Letters Patent Nos. 1,379,224; 1,507,439; 1,507,440; 1,630,811 and 1,630,812; in view of conditions and limitations which must be imposed on the claims of said Letters Patent in the light of the specifications and drawings forming part of said Letters Patent, and of the proceedings in the Patent Office pending the application for said Letters Patent, the claims of said Letters Patent cannot be lawfully and properly construed to cover and embrace any apparatus or devices, made and or used by this defendant.

Seventeenth. This defendant avers upon information and belief that the claims of the said Letters Patent of the United States Nos. 1,379,224; 1,507,439; 1,507,440; 1,630,811 and 1,630,812, do not cover any valid or patentable combinations, but embrace mere aggregations of elements, that they do not cover or embody any patentable subject-matter, and that they are not patentable according to the statutes and laws of the United States.

Eighteenth. This defendant therefore denies that the plaintiff is entitled to the relief prayed in the bill of complaint, or any part thereof, and prays that the same be dismissed, and that the defendant recover its costs in this behalf most wrongfully sustained.

Magic City Kennel Club, Incorporated, Defendant,
by Arthur C. Brown and Carroll & Jameson, Solicitor- and of Counsel for Defendant.

[File endorsement omitted.]

[fol. 71] IN UNITED STATES DISTRICT COURT

STIPULATION RE PATENTS—Filed May 26, 1928

It is hereby stipulated between counsel for the respective parties that the ordinary officially printed copies, or photographic copies thereof, of United States and foreign patents may be received in evidence at the trial in place of and with the effect of certified copies thereof; that the dates stated in the printed captions and head notes of such are prima facie correct for the facts to which they refer; and that all contents of patents so introduced are subject to correction by either party by due proof.

Hunt & Eagleton, E. Howard McCaleb, Solicitor- for Plaintiff. C. A. Anderson, Carroll & Jameson, Arthur C. Brown, Solicitor- for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER APPOINTING SPECIAL MASTER—Filed June 18, 1928

This cause coming on to be heard upon the application of both parties to refer the issues both of law and fact to a master for his investigation and decision, and it appearing to the court that said cause is at issue and both parties are present consenting to the reference.

It is, therefore, ordered, adjudged and agreed that said cause, with its pleadings, evidence and exhibits be referred to Joe T. Dewberry to hear and determine the issues of law and fact arising in this cas;

And it is further ordered, adjudged and agreed that the said Joe T. Dewberry shall report his conclusions of law and fact and his judgment thereof, together with the evidence upon which he founds his conclusions to this court by the 18 [fol. 72] day of July, 1928, and the same shall be filed to wait the further act of this court.

F. E. Kennamer, Judge of the United States District Court, Northern District.

Tulsa, Oklahoma, May 24, 1928.

Oath of Special Master

I, Joe T. Dewberry, having heretofore been duly appointed special master in the above entitled cause, do solemnly swear that I will faithfully and impartially perform my duties as such master, agreeable to the order of the court, to the best of my ability and understanding. So help me God.

Joe T. Dewberry.

Sworn to before me and signed in my presence this 8th day of June, 1928. F. E. Kennamer, Judge of the District Court of the United States for the Northern District of Oklahoma.

[File endorsement omitted.]

In United States District Court

Motion to Discharge and Vacate Order Requiring Bond in Lieu of Preliminary Injunction. Filed June 18, 1928

Now come the defendants in the above entitled cause and move the court for an order discharging and vacating the bond required of defendants in lieu of preliminary injunction and order providing for said bond, for the reason that the said bond and order were secured by fraud and misrepresentation of material matters in the application of said order and the proofs in support thereof, in that in the affidavits made by Clement O. Gittinger and Thomas A. Keen in support of plaintiff's application for said order, the said Clement O. Gittinger and Thomas A. Keen purported to recite the claims of letters patent No. 1,630,812 in suit, but omitted therefrom material elements of said claim which are not employed by the defendants in the alleged infringing [fol. 73] structure, and because of other material omissions and misrepresentations on the part of plaintiff.

Magic City Kennel Club, a Corporation; John Shaughnessy, George Hurford, John J. O'Brien, and J. W. Colley, Defendants, by Carroll & Jameson, Arthur C. Brown, Solicitors for said Defendants.

Duly sworn to by Arthur C. Brown. Jurat omitted in printing.

[File endorsement omitted.]

In United States District Court

Report of Special Master, with Findings of Fact and Conclusions of Law. Filed Nov. 9, 1928

To the Honorable F. E. Kennamer, Judge of said Court:

The special Master heretofore appointed by your honor respectfully submits the following report, with findings of fact and conclusions of law:

Plaintiff instituted this action on September 16th, 1927, as administratrix of the estate of Owen P. Smith, deceased, alleging her residence and citizenship in the City of Miami, [fol. 74] Dade County, Florida; alleging the ownership by Owen P. Smith in his lifetime of certain letters patent issued by the United States of America; alleging the incorporation of defendant Magic City Kennel Club under the laws of Oklahoma, and its domicile and place of business in Tulsa County, Oklahoma, and alleging the residence of the individual defendants to be in Tulsa County, Oklahoma.

Plaintiff further alleges that the defendants conduct a dog racing enterprise under the name of Magic City Kennel Club, and charges the defendants with having unlawfully made, used, sold or leased apparatus embodying the inventions covered by the several letters patent issued to Owen P. Smith, and the continuation of such use since about September 1st, 1927, and that the individual defendants have made, used, sold, or leased such infringing apparatus for their own benefit, profit and advantage, using and employing the defendant Magic City Kennel Club as a cloak or shield therefor. Plaintiff further alleges that some of the individual defendants are partners of said Magic City Kennel Club and that they are in a peculiar and special relationship to said Magic City Kennel Club, and that all of said individual defendants are participating in the unlawful acts and doings of said Magic City Kennel Club, have done so heretofore and threaten to continue so to do; that shortly before the organization of the Magic City Kennel Club, on or about the 1st of July, 1927, the individual defendants, or some of them conspired together to usurp the rights and privileges granted by said patents to Owen P. Smith, with full knowledge thereof and of the rights of the said Owen P. Smith therein and to damage and injure the said Owen P. Smith

but denying that said individual defendants have a regular and established place of business at and with the Magic City Kennel Club, or that any of the individual defendants are conducting and operating a dog racing enterprise near the City of Tulsa, Oklahoma, or that they have a regular and established place of business near the City of Tulsa for the purpose of carrying on said dog racing enterprise under the name of Magic City Kennel Club, and denying every allegation in paragraphs three and four in the bill of complaint.

Said defendant admits the issuance to said Owen P. Smith of the three patents above named as well as the two which were later abandoned by the plaintiff, but denies that Owen P. Smith was the original, first and sole inventor of the alleged improvements set forth in said letters patent, or any of them, and specifically denies the charges of infringement contained in the bill of complaint.

Said defendant further alleges that long prior to the application of Owen P. Smith for patent [illegible] to the manufacture and sale of the alleged improvements covered by his patents within the State of Oklahoma. Said defendant specifically [illegible] between it and the individual defendants, or any of them, or that said defendant has [illegible] Owen P. Smith and the [illegible] was organized to further the [illegible] defendants or any of them [illegible] or that said defendant has [illegible] profits from its sale or any [illegible] that said defendant has derived [illegible] to the plaintiff, or that said [illegible] damage by any such act or [illegible]

Said defendant further alleges that the improvements [illegible] Owen P. Smith were not [illegible] and patented by said [illegible] and apparatus identical or [illegible] had been previously [illegible] and described in other patents, the date, number [illegible] of some of United States patents and Foreign

of said previous patents referred to, charge the invalidity of the Smith patents.

The individual defendants, John Shaughnessy, George Hurford, John J. O'Brien, subsequent to the filing of answer, filed joint and several amended answer, to substantially the same effect as the separate amended answer of the Magic City Kennel Club.

The defendant, J. W. Colley, was included in said answer above named but it appears from the record that this was inadvertently done because the defendant, J. W. Colley, had previously filed his separate answer, consisting of disclaimer.

A preliminary injunction was issued by the Hon. F. E. Kennamer, which was dissolved upon the giving by defendant Magic City Kennel Club, of a bond in the sum of Twenty Thousand Dollars, as fixed and liquidated damages, and thereafter the matter was referred to Joe T. Dewberry as special master under order dated May 24, 1928, authorizing said special master to hear and determine the issues of law and fact arising in the case, and directing him to report his conclusions of law and fact and his judgment thereof, together with the evidence upon which he founds his conclusions, to the court by the 18th day of July, 1928. This time has by subsequent orders been extended to the 18th day of November, 1928.

On the 18th day of June, 1928, the taking of testimony was begun before the special master at Tulsa, Oklahoma, [fol. 77] and concluded on the 19th day of June. The testimony was taken by Mr. George H. Lesley, and the transcript will be filed with this report.

At the commencement of the hearing it was agreed that since the defendant, J. W. Colley, had disclaimed, the bill might be dismissed as to him. (Tr. 12.)

The plaintiff introduced in evidence certified copy of letters of administration issued to Hannah M. Smith, as administratrix of the estate of Owen P. Smith, deceased, same being plaintiff's Exhibit No. 1.

As Exhibits 2, 3 and 4, respectfully, plaintiff introduced certified copies of patents issued to Owen P. Smith, numbered 1,379,224, "Improvement in dog racing amusements"; No. 1,507,440, "Improvement in housings for

conveyor cars and tracks"; No. 1,630,812, "Improvement in traction cars and the like."

No evidence was introduced as to the other two patents mentioned in the bill of complaint and the same will be treated as abandoned.

The complaint specifically charges infringement of claims 1 and 2 of patent No. 1,379,224, which are as follows:

"1. In a dog racing amusement, a race course suited for dogs, a casing extending around the outer side of the race course and provided with a longitudinal opening, a mechanical conveyor including a track extending around the race course and located within the casing, and a conveyor car mechanically operated upon said track, and provided with an arm extended through the longitudinal opening of a casing in a projecting position over the track and adapted to carry a lure, and a wheel rotatably mounted on and supporting the arm at the projecting end thereof."

"2. In an amusement, the combination of a race course suited for dogs, a covered rail track adjacent said course on one side, a conveyor car mechanically operated upon said track, a horizontally extending arm hinged to said car extended midway of said course, a wheel rotatably mounted near the end of said arm, and resting upon the ground, a platform supported by said arm, and a lure or quarry mounted upon said platform for attracting the dogs."

Testimony with reference to the construction of the apparatus or device used by the defendant Magic City Kennel Club, will be considered in each instance in connection with the claims of the particular patent in question. The issues [fol. 78] have been narrowed by counsel for defendants so that consideration need be given only to the proposition of the validity of the Smith patents; and if held to be valid, the proposition of whether the structures, apparatus, or devices of the defendant, Magic City Kennel Club, infringe upon the Smith patents.

In their brief counsel for the defendant concede ownership of the patents above mentioned and abandon that part of their answer alleging that Smith had parted with the right to make and use his patents in Oklahoma. Counsel for

invention, aside from the arrangement of the housing, was the horizontal arm attached to the traction car and extending out on to the racetrack, with the lure mounted on the outer end of the arm, it is my opinion that the method or form of support of the arm was not an essential element of the invention, and that the substitution of a rigid support for the arm at the inner end, instead of supporting it by a flexible hinge at that end and a wheel at the outer end, is merely the equivalent of the method outlined in the Smith patent, and that the use of the horizontal arm for supporting the lure constitutes the appropriation of the essential feature of this part of Smith's patent, and that the device of the defendants therefore infringes on his patent.

Defendants urge the proposition that Smith was not a pioneer inventor in the field of dog racing apparatus, and that by reason of the rejection of his original claims on the patents of Pinard, Moss, Walsh and Everett, and his acquiescence in the action of the patent office, and the redrafting of his claims to meet the rejections of the Examiner, he is only entitled to a narrow range of equivalents, and therefore, is limited largely to the particular form of construction, and especially the form of support for the lure carrying arm, and that because the defendants have omitted from their device the hinging of the arm to the car and the support of the arm at its outer end by a wheel, there is no infringement.

While it is true that Smith is not a pioneer inventor in the field of dog racing apparatus, yet, the essential feature of his invention, that is, the lure carrying horizontal arm, is of pioneer character, and it constituted so advanced a step forward in the art, as in the opinion of the Master, to entitle him to a range of equivalents more liberal than urged by the defendants. I think the proper rule to be applied is that quoted from Walker on Patents in the opinion heretofore referred to from the District Court of the Eastern District of Louisiana, as follows: "That an inventor is entitled to a range of equivalents commensurate with the scope of his invention. The sold distinction between primary and secondary patents in respect to range of equivalents, if such distinction ever really existed, has been eradicated." The Master is further of the opinion that the rule laid down by the Supreme Court in the case of Ma-

[fol. 81] chine Company vs. Murphy, 97 U. S. 120, 24 L. ed. 935, is applicable to the Smith patents. The court there said:

"Except where form is of the essence of the invention, it has but little weight in the decision of such an issue; the correct rule being that, in determining the question of infringement, the court or jury, as the case may be, are not to judge about similarities or differences by the names of things, but are to look at the machines or their several devices or elements in the light of what they do, or what office or function they perform, and how they perform it, and to find that one thing is substantially the same as another, if it performs substantially the same function in substantially the same way to obtain the same result; always bearing in mind that devices in a patented machine are different in the sense of the patent law when they perform different functions or in a different way or produce a substantially different result. Nor is it safe to give much heed to the fact that the corresponding device in two machines organized to accomplish the same result is different in shape or form the one from the other, as it is necessary in every such investigation to look at the mode of operation or the way the device works, and at the result, as well as at the means by which the result is obtained. * * *

"Authorities concur that the substantial equivalent of a thing in the sense of patent law, is the same as the thing itself; so that if two devices do the same work in substantially the same way, and accomplish substantially the same result, they are the same, even though they differ in name, form, or shape. Curtis Patents, (4th ed.) Sec. 340."

Applying this rule I am unable to escape the conclusion that the lure carrying arm in use by the defendant, Magic City Kennel Club performs not only substantially, but identically, the function of the arm covered by the Smith patent, that is, the carrying of the lure upon and near the surface of the race track, in plain view of the pursuing dogs; that the form or manner of supporting the Smith lure carrying arm by the hinge and wheel is not of the essence of his patent; and that the pivoting of the lure carrying arm on the car in use by the defendants so that the arm is held in a rigid position while in operation, is simply the substitution of an equivalent means of support,

causing the device to perform substantially the same function in substantially the same way as the Smith structure or device.

Claim 1 of the Smith patent calls for a casing extending around the outer side of the race course, and provided with [fol. 82] a longitudinal opening, a mechanical conveyer including a track extending around the race course, and located within the casing, and a conveyer car mechanically operated upon said track and provided with an arm extended through the longitudinal opening of the casing in a projecting position over the track.

Claim 2 calls for a covered rail track adjacent said course on one side, a conveyer car mechanically operated upon said track, a horizontally extending arm hinged to said car extending midway of said course.

The Master is of the opinion that the use of the horizontal lure-carrying arm by the defendants constitutes infringement of both claims 1 and 2, and that the use of the casing or housing with a longitudinal opening through which the horizontal lure-carrying arm extends, since said casing or housing of the defendants is located on one side of the race course, constitutes infringement of claim 2, and, as will be pointed out in the consideration of patent No. 1,507,440, the location of the casing or housing of the defendants on the inner side of the oval track constitutes simply a transposition of parts, which is not sufficient to avoid infringement, and, therefore, the use of the housing with the continuous longitudinal opening, in conjunction with the horizontally extending lure-carrying arm, constitutes infringement of both claims 1 and 2 of patent No. 1,379,224.

The second patent in controversy is No. 1,507,440, September 2, 1924, "Improvement in housings for conveyer cars and tracks," and it appears from an examination of the file wrappers in connection with this and patent No. 1,379,224 that application for patent No. 1,507,440 was filed separately upon suggestion of the Examiner in the patent office. Plaintiff specifically charges infringement of claims 1, 2 and 3 of this patent, which are as follows:

"1. In a housing for covering tracks and cars having latterally extending arm operated upon said track, the combination of posts set in the ground at the sides of

said track, timbers attached to said posts to form a frame, and boards attached to said timbers and posts to form a continuous enclosure above said track, and having a continuous opening in one side of said housing adapted to permit extension of the latterally extending arm there-through, and truss rods attached to the closed side of the housing adapted to support the side of said housing above the said continuous opening."

[fol. 83] "2. In a continuous housing for concealing a rail track and conveyer car having a latterally extending arm, posts on either side of the track, timbers attached to the upper and lower ends of the posts to form a frame, the upper timbers being inclined upwardly, adjustable stay-rods connecting the upper ends of the posts to support the inner side wall of the frame, boards attached to the frame to form a covering, one side of the covering having a continuous opening therein through which the arm extends."

"3. In a continuous housing for concealing a rail track and conveyer car having a latterally extending arm, base timbers below the ground surface, having rails thereon, posts on each side of the rails, connected to the base timbers and extending upwardly therefrom, the inner post being of less height than the outer post, inclined timbers connecting upper ends of the posts, and screw-threaded adjustable stay-rods secured to the upper end of the outer post and supporting the inner post therefrom."

The construction of the housing used by the Magic City Kennel Club is partially disclosed by the photographs marked as Exhibits D-30 and D-31. It is apparent from these photographs that the housing consists of an enclosure supported in some manner, concealing the tracks upon which the conveyer car operates, and having a continuous opening on the side adjacent to the race track. From the photographs and the testimony of witnesses the Master finds that this housing was constructed in substantially the following manner: That there is about a 4" opening in the side of the housing next to the course and that the wall of the housing extends five or six inches above the opening; that the roof of the housing on the side next to the course is about 12" from the ground, with a wire mesh fence about two or two and a half feet high on top of the housing; that

on the side next to the course there is a board about 1 inch thick and 4 inches wide extending downward from the roof and right above the continuous opening or slot through which the lure carrying arm projects. That the 1" x 4" is nailed to the studding or support part of the roof. That the roof is supported by two by fours across the top; that boards are fastened to the two by fours to form a continuous cover or top. That the back wall of the housing consists of posts set in the ground with boards fastened to the posts to form a continuous side. That the front or inner wall next the course below the continuous opening consists of posts set in the ground with boards fastened to form a continuous side up to the longitudinal opening. That the two by fours supporting the roof or top extend beyond the [fol. 84] back wall with wooden braces attached to the extreme end and extending downward and connecting with the ties which support the track or rails upon which the conveyer car operates or connecting with the posts forming part of the back wall, thus forming a brace, or what is referred to by witnesses for the defendants as a Cantilever method of bracing. The portion of the housing above the continuous opening next the track consists of the one by four heretofore referred to fastened to the ends of the two by fours supporting the roof, and consequently extending downward a distance of approximately 4 inches to the continuous opening. The roof of defendant's structure slopes slightly to the rear or back side of the housing away from the course. Inside of the housing is placed the rails upon which the conveyer car operates, the same being located in an excavation of sufficient depth to bring the bottom part of the continuous opening almost to a level with the ground of the course, or at most only a few inches above the ground of the track. On these tracks the conveyer car operates with the horizontal arm extending through the continuous opening and out part way over the course.

The only particular difference the Master can determine between the construction of defendant's housing and that called for by the Smith patent is that in the construction under the Smith patent, instead of having the timbers supporting the roof extend outward from the rear wall and braced downward, the upright posts set in the ground to form a part of the back wall in the Smith construction ex-

tend above the roof and the braces extend from the top of these back posts to the front or course side of the housing and thus support the roof and that part of the housing above the continuous opening, to keep same from sagging. The same result is obtained in the defendant's structure by extending the roof supporting timbers outward from the back wall and bracing them from their outer end downward to the ties carrying the car rails, or to the posts of the back wall.

It is earnestly contended by the defendants that this difference in the method of constructing the housing, coupled with the fact that the defendant's housing is located on the inner side of the race course instead of on the outer side, refutes the plaintiff's contention that the Smith patent is infringed.

Again we are called upon to apply a rule of construction which either narrows the Smith patent so far as equivalents are concerned, and thus excludes defendant's structure, or one that entitles him to a range of equivalents sufficiently [fol. 85] broad to include the defendant's structure and establish the plaintiff's contention of infringement. The defendants contend that they have omitted the truss or stay-rod element of each claim and have used no equivalent of same, that the only novelty in the patented structure is the specific location of the opening in the side of the housing, and the specific means of supporting the boards of the side of the housing, depending from the roof and forming a part of the side above the opening; and further that unless the defendant's structure includes an opening in the side of the housing, as distinguished from a mere opening between the side and roof, or unless defendants use the specific supporting means recited in the claim, there is no infringement. It is also contended that the defendants do not have an opening in the side of the housing. This latter claim cannot be sustained for the reason that in the Smith patent there is no specific height of the housing called for, no specific width or height below the opening or above the opening, and a housing could readily be constructed within the scope of the claims by having the part of the side above the opening 1 inch from the roof to the opening or any other distance; and for the further reason that in defendant's structure, while counsel for defendants con-

arm [illegible] the continuous openings, and in view of these facts, I am forced to conclude that the defendant's structure [illegible] claims of the Smith patent No. 1,295,446.

[illegible] the construction of the device [illegible] the course instead of [illegible] location for [illegible] the housing from the outer [illegible] and since, under the [illegible] is sustained, [illegible] the housing and conveyer [illegible]

[illegible] No. 1,530,812, May 31, [illegible] and the like." In- [illegible] patent is charged; the [illegible] as follows:

[illegible] described, the combination with [illegible] power mounted upon said frame, [illegible] upon an axle rotating in bearings rigidly attached to said frame, wheels mounted upon [illegible] axle rotating in bearings mounted upon a support adapted to rotate partially about its mid-center, guides on said support and engaging the frame to hold said support in horizontal position and springs connected between said support and the frame adapted to hold said wheels normally in alignment with the aforementioned wheels.

[illegible] In a device of the class described, the combination with a motor driven car, of an axle rotatably mounted in bearings rigidly attached to said car, wheels fixedly mounted upon said axle, a second axle rotatably mounted in bearings attached to a cross bar pivoted at its mid center to the frame and adapted to turn to right or left, bolts extending through said cross bar and being provided with adjusting means and springs connected from said bolts to the frame on either side of its center adapted to hold said cross bar normally at right angles to the direction of travel of the car.

"3. In a device of the character described, a frame comprising side and end members, to axle journalled in bear-

ings carried by the frame and having wheels thereon, cross members extending transversely of the frame to form supports, a cross bar pivotally supported by one of the cross members for swinging movement in a horizontal plane, an axle carrying wheels journalled, in supports on said pivotal cross bar, guides on said cross bar and extending upwardly and outward to engage the side frame, thereby holding the cross bar in horizontal position, bolts passing transversely through the cross bar on both sides of the pivotal connection between the cross bar and cross member and springs connecting the said bolts with a second cross member to hold said cross bar and the axle carried thereby normally at right angles to the direction of travel of the car, and means for propelling the car carried by the said last mentioned cross member."

The traction car in use by the Magic City Kennel Club is shown by photograph used as Exhibit D-32. The photograph shows the lure carrying carm in its retracted position parallel with the car, or the position in which the arms rests when the lure is caused to disappear under the housing at the end of a race. The photograph also shows the pivotal arrangement by which the arm is fastened to the car. As the master understands the matter, this car, or the arrangement of the arm upon it, is the only part of the apparatus used by the defendant, Magic City Kennel Club, on which it is claimed a patent other than the Smith patent exists. The individual defendant, John Shaumessy, has a patent covering certain features of this device, which will be referred to more in detail hereafter.

The constructon of this car is briefly as follows: There are four flanged wheels mounted upon a frame of channel iron, the axle upon which the rear wheels are fastened being rigidly attached to the frame, the front axle, or rather the cross member carrying the front axle, is pivoted with a king-bolt so as to permit the part of the car carrying the [fol. 88] front wheels to turn in either direction, to right or left, similar to the action of the fifth wheel action on a buggy, and the bolster arrangement of a wagon. To keep the front wheels in alignment with the rear wheels there are two springs, between the front wheels, and a short distance inside of the frame proper upon which the axle and pivoted member are mounted, these springs being attached

at one end to the bolster or pivoted member, and the other end to the cross member extending from one side of the frame-work to the other, and upon which, as shown by photograph D-32, is mounted the pivotal arrangement of the lure-carrying arm. It appears from the testimony that these springs are fastened to the cross member at one end and to the bolster or pivoted portion of the front axle arrangement at the other, by being hooked through holes bored in the bolster and in the cross member, and that they are fastened in a slightly diagonal position: the function of the springs is to hold the front wheels under tension while the car is rounding a curve and to swing them back into line with the rear wheels as the straight portion of the track is reached. The car is operated by means of an electrical motor mounted near the rear wheels, having on the motor a gear which engages with another gear on the rear axle, thus driving the car forward.

The principal controversy between the plaintiff and defendant with reference to this car appears to be concerning the springs referred to. The Smith patent in Claim Number One calls for "springs connected between said support and the frame adapted to hold said wheels normally in alignment with the aforementioned wheels." Claim two calls for "the combination with a motor driven car, of an axle rotatably mounted in bearings rigidly attached to said car, wheels fixedly mounted upon said axle, a second axle rotatably mounted in bearings attached to a cross-bar pivoted at its mid-center to the frame and adapted to turn to right or left, bolts extending through said cross bar and being provided with an adjusting means and springs connected from said bolts to the frame on either side of its center adapted to hold said cross bar normally at right angles to the direction of travel of the car." With reference to the spring arrangement claim three calls for "bolts passing transversely through the cross-bar on both sides of the pivotal connection between the cross-bar and cross-member and springs connecting the said bolts with a second cross-member to hold said cross-bar and the axle carried thereby normally at right angles to the direction of travel of the car."

[fol. 89] It is the contention of the defendants that because the springs on their car are connected to the cross-member by having the ends of the said springs inserted

in holes drilled in the cross-member instead of being attached to bolts passing through said cross-member, and are fastened at the other end to the pivoted part in the same manner instead of to bolts and because there is no means of adjustment on the springs (the Smith patent, in claim two, referring to the bolts extending through the cross-bar and being provided with adjusting means), that the construction of defendant's car does not come within the terms of the claims of the Smith patent. It will be noted however, that in claim Number one of the Smith patent the call is for springs connected between the support and frame adapted to hold the wheels normally in alignment. It is true that in claim two the call is for bolts extending through the cross-bar and provided with adjusting means, with the springs connected from the bolts to the frame, but in claim three the adjusting means is not called for, the claim simply providing for bolts passing transversely through the cross-bar and springs connecting the bolts with the cross-member to hold the cross-bar and the axle normally at right angles to the direction of travel of the car.

In view of these various provisions as set forth in the claims, I do not believe that under a proper construction of same, Smith is limited in the scope of his patent to the fastening of the springs to adjustable bolts, as is contended by the defendants. It is clear that the function performed by the springs on the car of the defendants is identical with the function designed to be performed by the springs called for in the claims of the Smith patent. If the element of adjustment of the springs is material, the springs on defendants' car could be adjusted by additional holes bored in the cross-member or the bolster so as to lengthen or shorten the tension on the spring. It is my opinion therefore that the method of fastening the springs on defendants' car is the equivalent of the method, or at least one of the methods, permissible under the Smith patent.

A number of patents were introduced by the defendants, showing the prior state of the art with reference to traction cars and the like, but it is not believed that any of them show a car adapted to travel at high speed around a curved track, without the assistance of human guidance, and since the Smith invention embodies this new feature, by means of the rotatably mounted front axle and the springs connecting same with the frame of the car, his patent must be

held to have covered a new and useful invention within [fol. 90] the meaning of the patent law, and that same is therefore valid. Considered in this light, and giving to the patent the range of equivalents which such a view justifies, it is the opinion of the Master that it is immaterial whether the springs extend from the rotatably mounted axle and bolster to the cross-member extending from one side of the frame proper to the other or whether they extend to and are fastened upon the extreme outside portion of the frame proper.

As heretofore stated, the individual defendant, John L. Shaughnessy, claims a patent at least upon a portion of the construction of the car in use by the Magic City Kennel Club, illustrated by photograph D-32. The scope of Shaughnessy's patent, as he understands it, and the limitations to which it is subject, is well illustrated by the following quotation from his testimony before the master:

Q. "Is that car that you are using at the Magic City track a patented construction?

A. "The car, what part of it?

Q. "The car or the arm?

A. "I don't know. I have got a patent from the United States Government on the arm and pivotal escape." (Tr. 151.)

The Shaughnessy patent is No. 1,628,518, May 10, 1927. "Improvement in disappearing rabbits for dog races." The very name given to the patent suggests its limitation to the means for causing the rabbit or lure to disappear at the end of a race. In view of the Smith patent No. 1,379,224, and Smith patent No. 1,630,812, both of which embody the horizontally extending lure-carrying arm, and the Creveling patent No. 1,481,313, all of which antedate the Shaughnessy patent, it is clear that the validity of the Shaughnessy patent could only be sustained by limiting it to the method of permitting the lure-carrying arm to swing backward parallel with the car, thus causing the lure to disappear under the housing. It appears that the Creveling patent was so limited in its scope, he having provided a pivotal disc device by means of which the lure-carrying arm was automatically retracted.

It is apparent therefore that the only new or novel thing embraced in the Shaughnessy patent is the pivotal spring arrangement by which the arm is retracted. The fact that this feature of the device used by the defendant Magic City Kennel Club may be covered by a valid patent to Shaughnessy does not justify the appropriation of the horizontally extending lure-carrying arm provided for in the [fol. 91] Smith patents, nor the use of the equivalent method of fastening the springs by means of which the traction car is enabled to travel at high speed on a curved track. The Shaughnessy patent therefore does not aid the defendant so far as the charge of infringement of Smith patent No. 1,630,812 is concerned.

Findings of Fact

The Master respectfully submits the following findings of fact:

1. That Smith was not a pioneer inventor in the art of dog racing apparatus, but that the combination of elements in patent No. 1,379,224 and the addition of the new and not theretofore used horizontal lure-carry- arm extending in a projecting position over the track, through a continuous opening in the housing, was of pioneer character and substantially advanced the art, and, therefore, entitled Smith to a liberal construction of his claims and to a wide range of equivalents, and that the patent is valid.

2. That the defendant, Magic City Kennel Club, in the use of the apparatus and devices shown by the evidence, has infringed claims one and two of patent No. 1,379,224; that said apparatus and devices embody, to all practical intents and purposes, all of the elements of said claims, insofar as function, operation and result are concerned; that the substitution of a rigid support of the lure-carrying arm for the hinged and wheel support, and the transposition of the housing from the outer side to the inner side of the race course, does not avoid infringement.

3. That by the proceedings in connection with the application for patent No. 1,379,224, Smith is not estopped as to the claims allowed, nor limited to a specific structure, nor to a movable support of the lure-carrying arm, nor to the placing of his housing on the outer side of the race course.

4. That patent No. 1,507,440 is valid. That as to this patent the housing used by the defendant, Magic City Kennel Club, is identical in function with that called for by claim Number One of the patent, and that as to claims two and three the defendant has merely transposed parts by moving the housing from the outer side to the inner side of the oval track, and has infringed these three claims of the patent.

5. That patent No. 1,630,812 does not disclose a pioneer invention, but does embody a new and useful improvement in the arrangement of the pivoted front axle, held normally [fol. 92] at right angles to the direction of travel of the car by means of the springs attached to it and to other portions of the frame-work, and therefore substantially advanced the art by adapting the car to use in dog racing, and particularly the ability to use the car at high speed on a curved track; and that the patent is valid.

6. That by reason of the new and novel features of Patent No. 1,630,812, as pointed out, Smith is entitled to a range of equivalents commensurate to the scope of his invention; and that construed in this light the traction car in use by the defendant Magic City Kennel Club, by reason of the use of the springs called for in the Smith Patent and the equivalent means of fastening same to the car, and the use of the horizontally extending lure-carrying arm, and the use of the pivoted front axle arrangement in connection therewith, infringes the claims of this patent.

7. That defendant Magic City Kennel Club is an Oklahoma Corporation, a citizen of Oklahoma, and has its place of business in Tulsa County, Oklahoma.

8. That the individual defendant, John Shaughnessy, has been actively engaged in the management of the dog racing track operated by the defendant, Magic City Kennel Club.

9. That no evidence was introduced by the plaintiff showing any connection of the individual defendants, George Hurford, and John J. O'Brien, with the dog racing business conducted by the Magic City Kennel Club.

10. That the bill of complaint is to be dismissed as to the individual defendant, J. W. Colley, by agreement of the parties.

11. That the defendant Magic City Kennel Club executed a bond in the sum of $20,000.00 to dissolve the temporary injunction granted herein, the bond being signed by National Surety Company of New York, as surety, and containing a provision that the same was given as stipulated and fixed damages, under an order made by the Hon. F. E. Kenemer, permitting the bond to be filed, and containing the further provision that the obligors agree and consent that judgment be rendered for the sum of $20,000.00, as a part of the final decree of this court.

12. That the plaintiff Hannah M. Smith is the duly qualified and acting administratrix of the estate of Owen P. Smith, deceased, is a citizen of the United States and of the State of Florida, and a resident of Dade County, Florida, and is entitled to maintain this action.

[fol. 93] Conclusions of Law

1. The master concludes that the plaintiff is entitled to a permanent injunction against the defendant Magic City Kennel Club, and the individual defendant John Shaughnessy, enjoining said defendants and each of them, their officers, agents, employees, confederates and attorneys from directly or indirectly employing, using, or causing to be used the inventions, or either of them, set forth in letters patent, No. 1,379,224, No. 1,507,440, No. 1,630,812 issued to Owen P. Smith and from infringing upon or violating said letters patent in any manner or from selling or disposing of infringing apparatus or devices used by the defendant Magic City Kennel Club; and entitled to the further order of this court directing said defendant Magic City Kennel Club to deliver up, to be destroyed or impounded, the said infringing apparatus and devices.

2. That the plaintiff is entitled to an accounting as against the defendant Magic City Kennel Club, a corporation, for any profits it derived from the said infringing apparatus or devices; and against the individual defendant, John Shaughnessy for any profits he may have personally derived, if any, from the use of said apparatus and devices.

3. That plaintiff is not entitled to triple damages.

4. That the plaintiff is entitled to no relief against the individual defendants, George Hurford, John J. O'Brien and J. W. Colley, and that the bill of complaint should be dismissed as to said defendants.

5. That plaintiff is entitled to a judgment against the defendant, Magic City Kennel Club, on the bond given to dissolve the temporary injunction, and against the National Surety Company of New York, the surety on said bond, in the sum of $20,000.00, in accordance with the provisions contained in said bond.

The Master files herewith the transcript of the evidence taken before him, together with all exhibits introduced in evidence.

All of which is respectfully submitted this 9th day of November, 1928.

Joe T. Dewberry, Special Master.

[File endorsement omitted.]

[fol. 94] In United States District Court

Defendants' Exceptions to the Master's Report—Filed Nov. 20, 1928

Exceptions taken by the defendants to the report made by Hon. Joe T. Dewberry, Special Master, to whom this cause was referred by an order of this court made and entered on the 24th day of May, 1928:

I

For that the Master in his report treated each of the patents in suit as a composite entity and found infringement thereof from the disclosures of the patents as a whole, including the specifications as well as the claims; whereas he should have treated each of the claims separately and made separate findings on each of the claims of each of the patents.

As to the Smith Patent No. 1,379,224

II

For that the Master in his report found that, on examination of the File Wrapper of patent No. 1,379,224, and in view of the prior patents upon which certain of the claims of the application for said Smith patent in suit were rejected—

"the real novelty or invention covered by the Smith patent No. 1,379,224 is the horizontal arm extending through the continuous opening in the housing, the arm extending out on to the race track and having a lure mounted at the end thereof, together with the arrangement and manner of using the housing or covered to conceal the traction car carrying the lure arm, and the tracks upon which it operated";

whereas he should have found that in view of said prior patents and the applicant's cancellation of claims in view thereof the only novelty or invention covered by either claim 1 or claim 2 of the Smith patent No. 1,379,224 is the wheel rotatably mounted near the end of the horizontal arm for resting upon the ground to support the arm at the projecting end thereof, together with the hinged mounting of the arm on the traction car.

III

For that the Master in his report based his findings on a conclusion that the "different methods of carrying the lure" disclosed in the prior patents upon which the Examiner in the Patent Office rejected certain claims made by the applicant for the Smith patent No. 1,379,224, do not appear to be practicable, and that there is no evidence of such ever having been successfully operated; whereas the [fol. 95] Master should have considered such prior patents as publications and as proof of prior knowledge or invention of methods of carrying the lure substantially identical with that claimed in the Smith patent No. 1,379,224.

IV

For that the Master in his report found that—

"the only question, therefore, so far as patent No. 1,379,224 is concerned, is whether or not the structure of defend-

ant, Magic City Kennel Club or the device used by it constitutes infringement";

whereas he should have found that the questions involved so far as patent No. 1,379,224 is concerned are whether or not the claims of the Smith patent No. 1,379,224, can, in view of the prior art, be construed to include the defendants' structure without also including the structures of the prior art, and whether or not the said claims had been so limited by the patentee as to preclude any finding of infringement in defendant's structure.

V

For that the Master in his report having found that—

"the defendants' horizontal arm does not have a wheel at the outer or track end under the lure as called for by the Smith patent";

should then have found that defendants' structure, therefore, does not infringe either of the claims of the Smith patent No. 1,379,224 in suit.

VI

For that the Master in his report found that—

"the method or form of support of the arm was not an essential element of the invention claimed in the Smith Patent No. 1,379,224";

whereas he should have found that the wheel rotatably mounted on the arm near the end thereof for resting upon the ground to support the arm was the essential element of the invention of the Smith patent No. 1,379,224.

VII

For that the Master in his report found that—

"the substitution of a rigid support for the arm at the inner end, instead of supporting it by a flexible hinge at that end and a wheel at the outer end, is merely the equivalent of the method outlined in the Smith patent"; whereas he should [fol. 96] have found that rigid support of the arm at its inner end permitted an entirely different mode of operation

of the arm of defendants' apparatus or device from that disclosed in the Smith patent No. 1,379,224, and enabled the defendants to support the arm without necessity for a wheel at the outer end of the arm, and that consequently defendants' arm and its support is not the equivalent of that disclosed and claimed in the Smith patent No. 1,379,224.

VIII

For that the Master in his report found that—

"the use of the horizontal arm for supporting the lure constitutes the appropriation of the essential feature of this part of Smith's patent";

and has eliminated from consideration the hinged mounting at the inner end of the arm and the wheel support at the outer end of the arm; whereas the hinged mounting and wheel support of the arm are made essential elements of the Smith patent No. 1,379,224, and particularly of each of the claims of that patent involved in this suit, and the Master should have found accordingly.

IX

For that the Master in his report found that the device of the defendants, therefore, infringes on the Smith patent; whereas the Master should have found that defendants' device does not infringe either claim 1 or claim 2 of the Smith patent No. 1,379,224.

X

For that the Master in his report, having found that—

"Smith is not a pioneer inventor in the field of dog racing apparatus";

further found that—

"the lure carrying horizontal arm of the Smith patent No. 1,379,224 is of pioneer character and it constituted so advanced a step forward in the art as to entitle him to a range of equivalents more liberal than urged by the defendants";

whereas he should have found that the general combination disclosed in the patent had been previously disclosed in prior patents and that the essential feature of the invention of the patent was the mounting of the arm and that the patent is not entitled to a range of equivalents broad enough to include defendants' device.

[fol. 97] XI

For that the Master in his report found that—

"the form or manner of supporting the Smith lure carrying arm by the hinge and wheel is not of the essence of his patent";

whereas the Master should have found that having limited his claims to support of the lure carrying arm by the hinge and wheel, the patentee made such elements the essence of his invention.

XII

For that the Master in his report found that—

"the pivoting of the lure carrying arm on the car in use by the defendants so that the arm is held in a rigid position while in operation is simply a substitution of an equivalent means of support, causing the device to perform substantially the same function in substantially the same way as the Smith structure or device";

whereas the Master should have found that by pivoting the lure carrying arm on a vertical axis on the car so that the arm is held rigid while in operation, the defendants provided a device different in structure and mode of operation from the lure carrying arm of the patent in suit.

XIII

For that the Master in his report in reciting what is called for in claim 1 of the Smith patent No. 1,379,224 omitted entirely any reference to the wheel rotatably mounted on and supporting the arm at the projecting end thereof, and therefore has based his findings on a misconception, or an inadequate and incorrect conception of claim

1; whereas he should have included all elements of the claim including the wheel support for the lure carrying arm as specified in the claim.

XIV

For that the Master in his report in reciting what is called for in claim 2 of the Smith patent No. 1,379,224 omitted entirely any reference to the wheel rotatably mounted on and supporting the arm at the projecting end thereof, and therefore has based his findings on a misconception or an inadequate and incorrect conception of claim 2; whereas he should have included all elements of the claim, including the wheel support for the lure carrying arm as specified in the claim.

[fol. 98]

XV

For that the Master found that it is immaterial whether or not the casing for housing the conveyor car is located at the outer side or at the inner side of the race course; whereas he should have found that claim 1 distinguishes from claim 2 of the Smith patent No. 1,379,224 by reciting the specific location of the casing at the outer side of the race course, and that said location is therefore material to the claim.

As to the Smith Patent No. 1,507,440

XVI

For that the Master found—

"that there is about a 4" opening in the side of the housing next to the course and that the wall of the housing extends five or six inches above the opening";

whereas the Master should have found that the side of the housing next to the course terminates about 4" below the roof of the housing so that a space of about 4" is provided between the top of the side of the housing and the roof.

XVII

For that the Master in his report has made conflicting

"that on the side next to the course there is a board about 1 inch thick and 4 inches wide extending downward from the roof and right above the continuous opening or slot, through which the lure-carrying arm projects";

and—

"that the 1" x 4" is nailed to the studding or support part of the roof. That the roof is supported by two by fours across the top; that boards are fastened to the two by fours to form a continuous cover or top";

whereas said findings are incomplete and misleading in not reciting that the one by four boards terminate with their lower edges flush with the lower edges of the two by four roof studdings, and the Master should have found that the one by four boards do not extend below the roof or form a part of the side of the housing but are wholly and entirely elements of the roof of the housing, in conformity with his finding—

"that the front or inner wall next to the course below the continuous opening consists of posts set in the ground with boards fastened to form a continuous side up to the longitudinal opening."

[fol. 99] XVIII

For that the Master in describing defendants' housing stated that it—

"is referred to by witnesses for the defendants as a Cantilever method of bracing";

whereas witnesses for the plaintiff, as well as witnesses for the defendants, testified that the roof of defendants' housing is of the Cantilever construction, well-known and extensively used for such purposes for many years, and the Master should have found that defendants' roof is of such Cantilever construction as distinguished from the truss rod construction of the patent in suit.

XIX

For that the Master again in connection with the Smith

ent No. 1,379,224, finds that the one by four board forming part of defendants' roof structure extends downward to the continuous opening in the side of the housing; whereas the Master should have found that said one by four boards are part of the roof structure and do not extend below the roof.

XX

For that the Master, although distinguishing defendants' Cantilever roof structure from the truss rod structure of the Smith patent No. 1,507,440, has ignored the structural differences and relied on his conclusion that the same result is obtained with both structures to find infringement; whereas having found that the structures are different, he should have found that the structures of defendants' roof is old and well-known and that if it is the equivalent of the structure of the patent in suit, then the claims of the patent are anticipated in this respect and invalid.

XXI

For that the Master has found that—

"it is plain from the photograph, Exhibit D-31, as well as from the testimony, that the one by four board extending downward from the roof to the opening can only be classed as the side of the housing above the opening";

whereas he should have found that the one by four boards are roof elements entirely separate from the side of the housing.

[fol. 100] XXII

For that the Master in his report found from the File Wrapper of patent No. 1,507,440 that—

"this application of this housing device in dog racing, together with the continuous longitudinal opening through which the lure-carrying arm extends, being the essential part or novelty in Smith's patent, he is not restricted to the particular form or method of bracing or supporting the structure outlined in the claims";

whereas the Master should have found that the File Wrapper of patent No. 1,507,440 specifically shows that it was the truss rod bracing that constituted the claim of essential novelty in said patent.

XXIII

For that the Master in his report found that—

"the method of bracing used by the defendants is the equivalent of the truss-rods or stay-members mentioned in Smith's patent";

whereas he should have found that defendants' cantilever roof structure cannot be considered the equivalent of the truss rod brace structure of patent No. 1,507,440, for the reason that the patentee expressly limited his claims to the truss rod structure in order to secure the claims and cannot now assert that the limitation is immaterial.

XXIV

For that the Master having found that——

"the method of bracing used by the defendants is the equivalent of the truss rods or stay members mentioned in Smith's patent";

should have found that if this is true then the claims of patent No. 1,507,440 are anticipated by the old cantilever structure employed by the defendants and are invalid.

XXV

For that the Master found that——

"the defendants' structure constitutes an infringement of the three claims of the Smith patent No. 1,507,440";

whereas he should have found that defendants' structure does not infringe any of the three claims of the Smith patent No. 1,507,440.

[fol. 101] As to the Smith Patent No. 1,630,812

XXVI

For that the Master in stating his understanding of the structure claimed in the Smith patent No. 1,630,812 has entirely ignored and eliminated from consideration the "guides on said support and engaging the frame to hold said support in horizontal position," which was an element injected into claims 1 and 3 by the patentee in order to differentiate his structure from the references upon which claims 1 and 3 had been theretofore rejected, and therefore, made an essential and material element of the claims.

XXVII

For that the Master found that because claim numbered 1 of patent No. 1,630,812 was not limited to the bolts for connecting the springs to the axle support and frame, and claim numbered 3 was not limited to any means for adjusting the springs, the scope of this Smith patent is not limited to "the fastening of the springs to adjustable bolts"; whereas the Master should have considered each of the claims of the patent separately and restricted the same according to the limitations imposed thereon by the patentee.

XXVIII

For that the Master in order to find that the defendants' structure infringes the Smith patent No. 1,630,812 has injected into defendants' structure elements and a mode of operation which is not present in the defendants' structure; whereas he should have construed the claims as they are written and according to the interpretation given to them by the patentee in order to secure their allowance.

XXIX

For that the Master in construing the claims of the Smith patent No. 1,630,812, and in comparing the patented structure with the prior art, found patenable novelty in the function of the structure as distinguished from the mechanical combination of elements, and without consideration of the fact that the patentee made no such distinction, but voluntarily limited his claims in view of such prior

art in order to secure allowance of the claims, and the Master should have found accordingly.

XXX

For that the Master found that the only novelty in defendant Shaughnessy's patent No. 1,628,518 is——

[fol. 102] "the pivotal spring arrangement by which the arm is retracted";

whereas he should have found that defendant Shaughnessy's patent No. 1,628,518 discloses and claims a structure wherein the material elements of the Smith patents in suit are not included, and that such structure has a different mode of operation than that of the Smith patents in suit, and that as the defendants' structure is built according to the Shaughnessy patent, there is a legal presumption that defendants' structure does not infringe the claims of the Smith patents in suit.

As to the Findings of Fact

XXXI

For that the Master having found that Smith was not a pioneer inventor in the art, ignored and eliminated from consideration the supporting wheel and hinged mounting of the Smith patent No. 1,379,224 in order to further find that the horizontal lure-carrying arm of said patent disclosed invention of a pioneer character entitling Smith to a liberal construction of his claims and to a wide range of equivalents; whereas he should have found that the claims of the Smith patent No. 1,379,224 are not entitled to a wide range of equivalents, but must be restricted to the actual novelty in the case, and when so restricted are not infringed by defendants' structure, and that if not so restricted then the claims are anticipated by the prior art and invalid.

XXXII

For that the Master found that defendant, Magic City Kennel Club, has infringed claims 1 and 2 of patent No. 1,379,224; whereas he should have found that the defendant, Magic City Kennel Club, infringed neither of said claims.

XXXIII

For that the Master found that defendants' apparatus and devices embody——

"to all practical intents and purposes, all of the elements of said claims, insofar as function, operation, and result are concerned";

whereas such a finding is not sufficient upon which to find infringement of the claims, and the Master should have found that because of the differences in structure between defendants' devices and apparatus and those claimed in claims 1 and 2 of patent No. 1,379,224, the said defendants did not infringe either of said claims.

[fol. 103] XXXIV

For that the Master found that——

"the substitution of a rigid support of the lure-carrying arm for the hinged and wheel support, does not avoid infringement";

whereas the Master should have found that as defendants do not employ the supporting wheel or the hinged mounting claimed in claims 1 and 2 of patent No. 1,379,224, it does not infringe said claims.

XXXV

For that the Master found that——

"the transposition of the housing from the outer side to the inner side of the race course does not avoid infringement";

whereas the Master should have found that location of the housing at the outer side of the race course is a material limitation to claim 1 of patent No. 1,379,224, and as defendants' housing is not located as recited in the claim, there is no infringement of claim 1 of said patent.

XXXVI

For that the Master found that——

"by the proceedings in connection with the application for patent No. 1,379,224, Smith is not estopped as to the claims

allowed, nor limited to a specific structure, nor to a movable support of the lure-carrying arm'':

whereas the Master should have found that the proceedings in connection with the application for patent No. 1,379,224 do estop the plaintiff from claiming a broad interpretation of said claims and do limit the claims to specific structure and particularly to the wheel support for the arm.

XXXVII

For that the Master in finding patent No. 1,507,440 valid and infringed by defendants' apparatus and devices has entirely ignored and eliminated from consideration the restriction in said claims to the particular part of the housing in which the continuous opening is located and the particular means for bracing the closed side of the housing constituting material limitations to the claims; whereas the Master should have found that such limitations are material and that as such elements are not found in defendants' structure the claims are not infringed.

[fol. 104]

XXXVIII

For that the Master having found——

''That patent No. 1,630,812 does not disclose a pioneer invention'':

entirely ignored and eliminated from consideration the limitations in said claims to the guides for the front axle support and to the specific means for attaching the springs to the support and frame constituting material limitations to the claims of said patent; whereas the Master should have found that without the guide and the specific means for fastening the springs to the axle support and frame the structure defined in the claims of the Smith patent No. 1,630,812 is fully anticipated in the prior art and the patent invalid, but that having restricted the claims to such features of novelty and as such elements are not found in defendants' structure then the claims, if valid, are not infringed by defendants' structure.

As to Conclusions of Law

XXXIX

For that the Master found that—

"the plaintiff is entitled to a permanent injunction against the defendant, Magic City Kennel Club, and the individual defendant, John Shaughnessy";

as recited in his first conclusion of law; whereas he should have found that the plaintiff is not entitled to the relief prayed for in its bill of complaint, and that the bill should be dismissed.

XXXX

For that the Master found that—

"the plaintiff is entitled to the further order of this court directing said defendant, Magic City Kennel Club to deliver up, to be destroyed or impounded, the said infringing apparatus and devices";

whereas the Master should have found that such prayer of the plaintiff should be denied.

XXXXI

For that the Master has found that—

"the plaintiff is entitled to an accounting as against the defendant, Magic City Kennel Club, and by the individual defendant, John Shaughnessy";

whereas the Master should have found that no accounting should be decreed.

[fol. 105] XXXXII

For that the Master has found that—

"the plaintiff is entitled to a judgment against the defendant, Magic City Kennel Club, on the bond given to dissolve the temporary injunction, and against the National Surety Company of New York, the surety on said bond, in the sum

of $20,000.00, in accordance with the provisions contained in said bond";

whereas the Master should have found that the order providing for said bond was issued under a misapprehension by the court and upon misrepresentation of the facts in the case, and that, therefore, said order should be vacated and the bond discharged, and further, that the plaintiff is not entitled to a judgment against the defendants on the bond or otherwise.

Respectfully submitted.

C. H. Jameson, Arthur C. Brown, Solicitors and of Counsel for the Defendants.

Receipt is hereby acknowledged of copies of the within exceptions this — day of November, 1928.

Hunt & Eagleton, by M. Pressly, for Hunt & Eagleton & E. Howard McCaleb, Attorneys for Plaintiff.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTION TO DISCHARGE AND VACATE ORDER REQUIRING BOND IN LIEU OF PRELIMINARY INJUNCTION—Filed Dec. 15, 1928

The above entitled cause coming before the court on defendants' motion to discharge and vacate the order requiring bond in lieu of preliminary injunction, and counsel for defendants and counsel for plaintiff having been heard:

It is hereby ordered:

That the motion be and the same is hereby overruled.

F. E. Kennamer, Judge United State District Court.

Tulsa, Oklahoma, December 15, 1928.

[fol. 106] OK. Arthur C. Brown, Atty. for Defts.

OK. E. Howard McCaleb, Hunt & Eagleton, Attys. for Pltff.

In United States District Court

Decree—Filed Dec. 15, 1928

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof:

It is hereby ordered, adjudged and decreed as follows:

1. That the exceptions filed by defendants to the report of Joe T. Dewberry, special Master, be overruled and said report be approved.

2. That the letters patent in suit being United States Letters Patent No. 1379224, granted May 24, 1921, to Owen P. Smith and United States Letters Patent No. 1507440, granted September 2, 1924, to Owen P. Smith, and United States Letters Patent No. 1630,812, granted May 24, 1927, to Owen P. Smith, are good and valid in law.

3. That Hannah M. Smith, administratrix of the estate of Owen P. Smith, deceased, is the owner of said letters patent and of all rights thereunder.

4. That defendants, Magic City Kennel Club, Incorporated, a corporation organized, chartered and existing under and by virtue of the laws of the State of Oklahoma, and defendant, John Shaughnessy, have and each of them has infringed said Letters Patent No. 1379224 as to claims One, and Two thereof; and said defendants have and each of them has infringed said Letters Patent No. 1507440 and claims One, Two and Three thereof; and the said defendants have and each of them has infringed said Letters Patent No. 1630812 and claims One, Two and Three thereof.

[fol. 107] 5. That said defendants, Magic City Kennel Club, Inc., and John Shaughnessy and each of them, and each of their officers, agents, employees and attorneys be, and the same are perpetually enjoined and restrained from making or causing to be made, selling or causing to be sold and using or causing to be used, directly or indirectly, the invention the subject matter of said United States Letters Patent No. 1379224 as claimed by claims numbered One and Two thereof.

6. That the defendants above named and each of them and each of their officers, agents, employees and attorneys

be and the same are perpetually enjoined and restrained from making or causing to be made, from selling or causing to be sold and from using or causing to be used, directly or indirectly, the invention, the subject-matter of said United States Letters Patent No. 1507440 and claimed by claims numbered One, Two and Three thereof.

7. That the defendants above named and each of them and each of their officers, agents, employees and attorneys be and the same are perpetually enjoined and restrained from making or causing to be made, from selling or causing to be sold and from using or causing to be used, directly or indirectly, the invention the subject matter of United States Letters Patent No. 1630812 and claimed by claims numbered One, Two and Three thereof.

8. It is further ordered, adjudged and decreed that the above named defendants be further perpetually enjoined and restrained from selling or disposing of the said infringing apparatus or devices used by defendant Magic City Kennel Club, and that said defendant Magic City Kennel Club, Inc., be ordered to deliver up to be destroyed or impounded, the said infringing apparatus or devices.

9. That a writ of injunction issue under the seal of this court directed against the above named defendants and each of them and each of their officers, agents, employees and attorneys and each of them as hereinbefore stated.

10. It is further ordered, adjudged and decreed that the plaintiff is entitled to recover from said above named defendants or either of them the profits they or either of them have derived by reason of said infringement as aforesaid: and that to that end this case be, and the same is hereby referred to Joe T. Dewberry as Master to take and state an account of the profits which said defendants, or either of them, have or has made by reason of such infringement.

[fol. 108] 11. It is further ordered, adjudged and decreed that the bill of complaint be dismissed as to the following named defendants: George Hurford, John J. O'Brien and J. W. Colley.

12. It is further ordered, adjudged and decreed that the plaintiff do have and recover judgment against the defend-

ant, Magic City Kennel Club, Inc., on the bond given under the order of this court of date of September 24, 1927, and filed in this cause on September 30, 1927, and against the National Surety Company of New York, surety on said bond in the sum of ($20,000.00) Twenty Thousand Dollars liquidated damages, in accordance with the terms of said bond and the order of court under which said bond was given and filed.

13. It is further ordered, adjudged and decreed that the compensation due Joe T. Dewberry, special Master herein, be and the same is hereby fixed at the sum of $2,000.00 up to this date, one-half of said sum to be advanced by plaintiff and one-half of said sum to be advanced by said defendants, payment to be made forthwith, and taxed as part of the costs.

14. It is further ordered, adjudged and decreed that plaintiff is entitled to recover from said defendants all costs to be taxed.

F. E. Kennamer, Judge.

OK. E. Howard McCaleb, Hunt & Eagleton, Attys. for Plaintiff. Arthur C. Brown, Atty. for Deft.

[File endorsement omitted.]

In United States District Court

Notice of Lodgment of Narrative Transcript of Testimony—Filed Feb. 7, 1929

To Messrs. Hunt & Eagleton, C. Arthur Anderson and Messrs. McCaleb & McCaleb, Solicitors and of Counsel for Plaintiff—Appellee:

Please take notice that the defendant appellants in the above entitled cause has lodged with the clerk of the said United States District Court a narrative transcript of the testimony in said cause, and will on February 25th, 1929, [fol. 109] ask approval of the court thereof in accordance with equity rule No. 75.

Magic City Kennel Club, Inc., and John Shaughnessy, Defendant Appellants, by Arthur C. Brown, Its Solicitor and Counsel.

February 7th, 1929.

Service of copy of the above notice acknowledged this 7 day of February, 1929.

Hunt & Egleton, Solicitors and of Counsel for Plaintiff-Appellee.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

Statement of Evidence—Filed Feb. 25, 1929

TRANSCRIPT OF TESTIMONY IN NARRATIVE FORM

Thomas A. Keen, a witness called for the plaintiff, testified as follows:

Direct examination:

I am a Construction Engineer and reside at 2458 North Johnson Street, New Orleans, Louisiana. We build buildings, grand stands and racing paraphernalia. I have been engaged in this line of work in building tracks—since 1910. I knew Owen P. Smith well. Have known him since 1909.

I constructed a dog racing track at Tucson, Arizona, in 1910, one at Houston, Texas, in the latter part of 1910 and 1911, one in East St. Louis, Illinois, one at Cicero, Illinois, one at Butte, Montana, and one at Milwaukee, Wisconsin. Mr. O. P. Smith employed me to construct these tracks.

I have inspected several tracks not constructed by me, and also overhauled some other tracks that I didn't build. I inspected tracks in Florida, New York, Ohio, West Virginia and Louisiana, and also in Texas and Kentucky.

The tracks at Tucson, Arizona, and Houston, Texas, were built with a tunnel in the center of the track and the car had an arm that come up from the slot, and then a saddle [fol. 110] was on top of that and the rabbit fastened on top. It was a vertical arm. These tracks were never operated. They were not successful. He had trouble with the slot giving in all the time and pinching the arm, and various reasons, water would get in and around it; and we got I guess a few races; every time the dogs run over the housing it would give in and put the car off. The slot was dan-

gerous to the dogs in getting their feet in the slot, breaking their toes, or tearing their toe nails out. In fact there was two or three dogs crippled in Houston.

I constructed and inspected other tracks since 1925, about September, 1925, on right up to now. I visited the Magic City Kennel Club Dog Race Track here in Tulsa. I observed the apparatus employed by them. There was a man out there let us in; it was raining at the time upon the housing, the part that was hinged right across from the grand stand there. We took a good look at the car. Mr. Anderson was with me at the time. The apparatus was out of use when we were out there.

I visited that track as a spectator while the dog races were being run. I paid my entrance fee. I saw a race course suited for dogs that had a covered rail track adjoining the course on the inside, and this covering had a continuous opening or slot all the way around on the side towards the track; and then there was a conveyor car that was electrically operated on these tracks inside of this casing, and the car was provided with an arm that extended from this continuous opening on to the track; the arm was pivoted on the car. I would call it rigid while it was in operation, and there was a lure mounted on the end. There was also a casing, the housing the car ran around in. In the housing there were posts set in the ground at both sides of the track; there were timbers attached to the post, and there were boards attached to these timbers and posts to permit a frame, and then there was a continuous opening on one side of it, and there were truss rods attached to the closed side of the housing to support the closed side of the housing above this continuous opening.

I inspected the truck or car that was used there. It was a four wheel truck, iron frame and the rear axle was solid or stationary, and the front axle was on a pivot, and there was two springs to keep that in alignment in going around the turn. There were guides, I suppose, to keep the plate.

I am familiar with the specification and claims and the drawings of the Smith patent No. 1,379,224. Claim 1 reads, "In a dog racing amusement, a race course suited for dogs, a casing extending around the outer side of the race course and provided with a longitudinal opening." Now at the [fol. 111] Magic City Kennel Club the casing is on the inside instead of the outside; that is the difference between

that. "A mechanical conveyor including a track extending around the race course and located within the casing, and a conveyor car mechanically operated upon said track and provided with an arm extending through the logitudinal opening of the casing in a projecting position over the track and adapted to carry a lure, and a wheel rotably mounted on and supporting the arm at the projecting end thereof." Well, at the Magic City Kennel Club they omit the wheel, they support the arm at this inner end, I would say pivoting it and making it rigid when in an operating position.

The function of the wheel at projecting end of the arm is to support the arm. The function of the pivoting of the arm at the inner or connecting end of the car is to support the arm. The function of the wheel to support the arm refers to the Smith structure. The function of the rigid support of pivoting the arm at the inner or connecting end to support the arm refers to Magic City Kennel Club structure.

Comparison of claim 2 of the Smith patent No. 1,379,224 with defendants' structure—the construction of the Magic City Kennel Club omits the hinge and also the wheel, and in place of that, pivot the arm, as I say make it rigid on the car at the inner end. The arm of the Magic City Club can spring. It is built that it can be released and retracked under the housing. I don't know whether you would call it a hinged axle, I would call it a pivot. Of course, it could be hinged to spring back just the same if it was fastened with a spring.

The arm is rigid when it is in operation during a race. After the race the arm of the Magic City Kennel Club retracks under the housing, flies back. The purpose of this is only to hide the lure; that is all I can see. It is necessary to hide the lure because the dogs would keep chasing as long as they could see it out there; if it was kept in front of them they would keep chasing. They still chase the noise and you have to use a curtain to stop them.

In the Smith construction at the end of the home stretch the lure escapes into what we call a den, a little trap door closes and the dogs stop. There is a brake about thirty feet from this escape stops the car and all noise stops and the dogs stop of their own accord.

If I was building a car and didn't put any wheel I would make the arm rigid on the car, and it would perform practi-

[fol. 112] cally the same function. I would make the rigid connection pivoted on the car at the inner end.

I think the arm with the wheel is the best because it adds less friction to the car and there is less chance of it snapping off than the rigid arm.

I would say the Magic City Kennel Club construction is identical with claim one of the Smith patent No. 1,507,440. I mean that the construction of it, the post and boards and the continuous opening and all that is present there. Now, of course, in Mr. Smith's construction he has a pitch to their roof and their roof out there is flat, and this picture here shows the truss above the roof. I am referring to Fig. 2. This is the Smith construction and supported part on the top, and the Magic City, their rafter continues from the back and then is trussed and tied to the closed side of the housing. In other words their roof is a little flatter than ours.

I didn't take any photographs of defendants' structure, but I believe Mr. Anderson had photographs made.

I can make a sketch of what I saw out there. I can do that. I can make a drawing of the housing, but I cannot make an exact drawing of that part of the arm. It has been so long ago. The exact detail I am not clear.

I had no suggestion from anyone with respect to this sketch. The sketch shows the housing and shows the arm projecting through the slot. The curve line at the end of the arm where you have a lure is a little platform where the rabbit is bolted onto the arm. The sketch (plaintiff's Exhibit 5) is a cross section of the housing and shows the arm projecting through the slot.

Cross-examination:

I have been actively engaged as a construction engineer since about 1911 on. I have supervised construction as superintendent since about 1910. I have constructed buildings and other lines, mechanical lines; also I had several devices I applied for patents on myself relating to dog racing. I have done a lot of building other than dog racing construction; also building in New Orleans; I was in the building business there when Mr. Smith got there. I was away from him from about 1916 to about September, 1925. At that time I was in the construction business in New

Orleans, contracting business. I did construction engineering in connection with the dog race tracks in Tucson, Arizona, and Houston, Texas, in 1910. I worked with Mr. Smith there; right under his personal direction. Those were the constructions where they used the underground [fol. 113] conduit at the center of the track with a slot in the arm.

We laid out a course twenty-five feet wide the dogs run on, and in the center of that we dug a trench out about thirty-six inches deep I should say and then he placed ribs he had cast in the foundry. I think they were four foot centers, and there were boards bolted onto these ribs to form an enclosure, and the ribs were built in against that. At the bottom there were cross ties and there were two tracks this conveyor run on and a little trolley wire on the side. That is practically the construction. The car was a four wheel truck, both axis being rigid on the frame work and the arm came up. It had a little cross-bar on the arm with springs on it so it would give and reduce the friction.

We first put the slot in our construction down about five-eighths of an inch wide and had to increase it one inch and a half. It was bored with a piece of angle iron right on the edge of it. The angle iron part lay right on the top of the track; it was flush with the dirt, and then went around the track right in the center of the track. This was dangerous for the dogs. They would get their feet in them. In fact there was a couple of dogs crippled in Houston when we tried it and we never did get a full race out of it. The dog would jump the track. The dogs would run all over the track. Some will hug the rail and others way wide. They would step on this angle iron if they run out that far. Getting their foot in the slot is what really broke their toes. I don't know as they slipped on this angle iron. I never watched them that close but I operated the machine myself and I could watch them fairly well from the door and I know two or three dogs that we tried out their toes broke. My idea was through the slot itself, getting their foot in it. If the dogs ran out that far they would step on this angle iron. Two dogs were crippled. It naturally would affect their speed if they stepped on the angle iron or slipped.

The track at Tuscon didn't operate at all; tried to get a few schooling races out of it and never could get the thing

to work, and the people refused to put up any more money there and Mr. Smith abandoned it and went to Houston, Texas. The ribs in the one at Tuscon was built of wood and the one at Houston of cast iron. They never did any actual racing at Houston for the same reason. We had the same slot construction at Houston as at Tuscon.

I inspected the tracks in New York and Ohio, West Virginia and Louisiana, and other places, to see that they were [fol. 114] constructed properly. Mr. Smith when I went back to him in 1925, that is the position he gave me to see all these tracks were properly constructed before they were opened. All the tracks I inspected were Mr. Smith's. I did not inspect any other tracks, excepting during these suits. The first track I ever heard of other than the Smith tracks was at Atlantic City. I think that was around 1925, but I never saw it.

I had heard of dog coursing, not racing, before I was employed by Mr. Smith. Dog coursing is conducted straight away; dog men get together and go out in the field and chase a live Jack Rabbit; let the dogs go in pairs and each turn is a point and the win is so many points. I was familiar with dog coursing three or four years before I went with Mr. Smith. Coursing was not new in Tuscon at that time. Some of the boys had grey hounds and they would go out on Sunday, get them a keg of beer, go out and do some coursing. As to how long the sport of dog coursing has been conducted or been in existence, I know only what I have heard; it has been in existence for years in England, may be seventy-five or eighty years ago or longer, been coursing.

The first time I heard of dog racing in which a mechanical lure was used was in Tuscon, Arizona, in 1910, when Mr. Smith came there and put in that track. I had never heard of one before that. I did not know whether or not it had ever been described in any book or printed publication prior to the time I saw it used in Tuscon. I believe if it had before some of those dog men around there would have told me about it. I would not say there had been no such publication because I didn't read all the books.

I don't remember the exact date I inspected the Magic City Kennel Club except it was the time we had the case here on the preliminary injunction. It was along in September of 1927. I was out at the track twice, once at night and once

during the day. I was a spectator on both occasions. I was a spectator when I inspected the trench and took the lid off. The man at the track took the lid up. We asked him if we could view the track. Mr. Anderson was with me and it was raining at the time. Mr. Anderson is one of the counsel in this case. We looked at the housing and car for fifteen minutes or so. That was the only time I was ever there except in the evening when I saw the races. I was there only one evening, the evening before they closed on the following day. I made a sketch for that other case at the time I was there. It was turned into the court. I believe I gave it to Mr. McCaleb.

[fol. 115] I would define the term slot as an opening. An opening or part opening, a slot, I don't know as it is. Well, it is a space between—I would say between two members, would be between two walls would be a slot; it is an opening between, I would say, two members.

Q. Wouldn't you define it as a space between two members in the same place, or cut in a member lying in the same plane?

A. Yes, sir, that would be a better way. Just like I spoke a moment ago, a slot in the center of the track at Houston and Tuscon.

The Smith arm is hinged to the conveyor car with an ordinary hinge, just the same as a hinge on a door or any other hinge, and then there is a wheel at the end of the arm to support the arm, to take any up and down movement. It supports the arm and takes care of up and down movements. There may be an up and down movement in the Smith arm if there is any variation in the track, bound to be, any variation in the rail track. There would hardly be a down movement on the Smith arm unless there was variations in the track because the wheel supports the end of the arm. If there is uneveness in the surface of the car there would be an up and down movement, and if there is no uneveness in the track there is no up and down movement. The up and down movement is desirable because as I say Mr. Smith built cars with rigid arms and had the arms snap off on him and that is why he went to the wheel and hinge. It reduces the friction there, I guess you would call it, crystalizing the arm from the vibration.

If the arm was at the end and no wheel to support it it would naturally drag on the track. Just vibration caused the breaking of the arm. I consider it desirable to have the hinge and the wheel. The wheel goes around on a little four-inch board on the track, entirely around the track. The board is not shown in the patent. It just shows the wheel on the ground but in order to make them smoothly he uses a board. It isn't in the patent. I think it would be possible to operate the Smith apparatus with a wheel without that board with the wheel running right on the dirt if it was graded properly and taken care of so as to make it smooth just like the board would be. The track gets muddy and wet and heavy some times. I don't know whether the wheel would operate under those conditions. I have never seen it operated without the board. I never saw one of the Smith arms and apparatus operated without the board under the wheel.

[fol. 116] I testified that the Magic City Institution had a rigid arm for carrying the rabbit when in an operating position. By rigid I mean it is, I guess you would call it solid, it cannot move. There might be a little shaking from the operation of it. It is fastened securely at the inner end, instead of being hinged, that is it. The night I saw it run there was vibration to the arm so that the rabbit moved up and down. I guess the length of it and the weight of the rabbit there caused that up and down movement of the rabbit. The wheel takes care of that in the Smith arm. The wheel eliminates that vibration.

I meant by the Magic City arm being pivoted, there is a release there, I would call it a dog, I suppose, a release to the arm, flies back, a spring which carries the arm back, tracks it; longitudinal, right straight back. I would say the purpose in throwing the arm back is to hide it from the view of the dogs. It goes under the housing. In the Smith patent the rabbit goes in a den and a little trap door closes behind it. The arm doesn't move horizontally at all to retrack the rabbit. The den is located with respect to the track right at the end of the home stretch just before you go into the turn. The straight way is continued on for about one hundred feet and at the end of that there is a door where the operator is stationed who operates the car, and between the door and this den there is a brake that stops the car. The

escape is in view of the dogs as they cross the finish line; it is one hundred and twenty-five feet from the finish line. The car is controlled in place on the track but there is another friction that stops it too. In other words a car going fifty miles an hour you can stop it in twenty-five feet.

In actual practice that brake is put on according to how far ahead of the dogs it is. You can let it coast in. You can lock the wheels on that car and it will go one hundred and fifty feet just of its own weight sliding along. I do not know of a rabbit having gone into the den during a race and the trap door not working—not since I have been there. I don't know whether it has happened or not. I have never seen a dog caught in that trap door—never saw them run into it.

It looked to me like defendants were using identically the same thing including a brake for the car. You see they are built in the motor; there are two currents in a car, and the current taken from the third wire goes through the armature of the motor, and when they reverse that they have one current locking the other, and that is how they lock the wheels of the car. They do not have any mechanical brakes for the [fol. 117] wheels of the car. That is provided in the Smith patent but they don't use it. They don't use the brake shown and described in the patent. He also has an application in for a braking in of this motor, which we expect out in the next month or so. The same system used by the Magic City. They are now applying for a patent on this kind of a braking system that they use out here at the Magic City. It has been applied for since 1922. There have been two claims allowed on it. It is a different method of braking than what is shown in the Smith patent in suit. It is in the motor itself.

I have employed cantilever principle for construction. Referring to the sketch marked plaintiff's Exhibit 5, and particularly to the parts marked timbers at the top of the sketch and truss rod, the difference between this construction and a cantilever structure of the type employed in building construction and bridges is, this is really a truss. It is in the nature of a cantilever truss. It performs the same functions as a cantilever. You could apply a cantilever truss there to support that upper side of the housing.

I have never known of cantilever trusses having been employed for that same purpose before. I have known of them in building purposes but not for this purpose. This is

a continuation of housing and conveyor arm. I have neve heard of the cantilever being used in connection with th housing of a car for a dog race track. I have known of i being used to support roofs or cornices ever since I hav been working at the building business, I suppose since abou 1906 or 1907. I suppose it was used long before that. The had books on it so it must have been used long before tha but I never heard of the continuation with a conveyor ca and the housing for dog racing.

The cantilever truss supports that part of the housing, a shown in this sketch, the side above the continuous opening There is a side above the continuous opening in the sketc right there. I refer to the horizontal part above the housing You can call it a roof if you want to, I call it the side abov the continuous opening. I mean the top side.

There is no vertical side in the housing above the open ing. There is a little baseboard put on the timbers is all You can call the top side the roof, I call it the top side. Th top side of a house would be the roof. The truss support the vertical wall or side of the housing. The only piece wit a vertical wall above the continuous opening is that little o the place of it and that would be a part of that top side o the housing. There is a side wall below the opening in th [fol. 118] side of the housing. It holds the sill of the track In other words the dirt holds against it. The boards o frames to this vertical post constitute the wall, but that i entirely separate from the roof. The truss rods don't sup port any of that side wall. They only support the top side

Defendants' car has a pivoted support for the front se of wheels. This support is guided by a plate across the fron that the front axle bearings are bolted to, and this bolt ha a counter bolt and then there are two springs attached to tw little bolts that stick up through a place that is followe with the motor, rests on to the other bolt this front axle i bolted to to keep the wheels in alignment. The bolt holds th end of the spring; you can call them studs; I call them bolt

I saw studs that those springs were attached to. I am positive of that. Well, I would say they were connecte there. I am very near positive they were connected wit bolts or studs. It has been so long ago that I don't kno exactly but it seems to me like they were. I am telling yo to the best of my ability. I don't know whether thos

springs were connected with bolts or studs, I believe they were. I say they were, I believe they were. It has been quite a while but it seems to me like they were bolts there. That is as close as I will say because it has been quite a while since I was out there. I won't make the statement any more positive than that because it has been quite a while since I saw the car. There were guides there, a little piece of angle iron, if I remember right that was the guide. I am very near positive of that. I wouldn't say positive that there were guides there of some shape.

Redirect examination:

I am testifying as to bolts that I saw there last November or September. I haven't seen the cars since last September.

The Magic City Kennel Club slot is a continuous opening between the top side of the housing and the retaining wall that holds the fill on the track, the top side of the housing and the wall that holds the fill. The wall that holds the fill is a vertical wall at the side of the housing.

There was never a complete race on the track I built in 1910 and 1911 in Houston. The tracks were abandoned.

The first time I ever saw or heard of dog racing as now carried on was through Mr. Smith in Tuscon, Arizona, when he came there to build that track in 1910. That track was abandoned. It was impractical. It kept caving in all the [fol. 119] time and water getting in there. We had a half dozen engineers from Houston trying to devise some method to take care of it. I have since heard of dog racing when I came back with Mr. Smith in 1925. I think it was the month of September.

I think infringements on Mr. Smith's patents started in the latter part of the year 1925. I think there was a track built at Tampa, Florida, in 1925. I would say there was in the neighborhood of about twenty-five of the Smith tracks in operation. They are not all operating now. They take their turn and have their meetings and close. At present there are about five or six operating. I don't know just how many tracks he had in 1925 at the time the infringement started. Miami, Florida, St. Petersburg, Florida, Erlanger, Kentucky, New Orleans, I don't know, seems to me like there were two or three others I cannot recall. There was one in

Re-cross-examination:

In preparing my affidavit I practically copied the claims of the Smith patent into the affidavit. After I inspected the car and was out there and read over Smith's claim I saw the construction was practically the same thing so that is why I worded it that way.

The only difference I saw between the patent claims and defendants' structure is that the defendants had, it seems to me, a piece of angle iron as a guide and the patent called for guide pieces. I have no guides. Your car is one and the patent calls for two. That is all the differ[illegible] between defendants' structure and the patent.

[illegible] the drawing in the traction car patent I said [illegible] the patent calls for guides, the picture or drawing [illegible] The defendants' structure shows one on each [illegible] of the patent there are four, two on each side. I [illegible] the defendants' car patent right out there [illegible] defendants' structure. I [illegible] the traction car patent exactly [illegible] the affidavit. I did [illegible] enough so it was the [illegible]

[illegible] the Magee City con[illegible] the claim. I [illegible] of the Smith patent [illegible] with [illegible] frame. They might in [illegible] claims from the patent [illegible] I don't [illegible] them.

[illegible] changes in the claim [illegible] have got [illegible] that this front [illegible] on each end, and in [illegible] What is [illegible] they [illegible] the same.

[illegible] the defendants' structure

what I thought it was. I am not positive that I changed the wording of the claim as it is in the patent. It has been quite a while.

Mr. Jameson: I suggest that the reporter assist the witness in checking the claim with the affidavit to determine whether they are alike.

Mr. Brown: Just a moment, I suggest that the witness read from the claim in the patent and that the Master take the affidavit and see if it is the same.

(Thereupon the camparison was made with the Master assisting the witness.)

The Master: After the word guide, the word——

Mr. Smith: In other words the affidavit omits the words "of said support and," referring to the guides.

Mr. McCaleb: The affidavit is what he saw.

The Master: This is supposed to be copied from the patent.

Mr. McCaleb: He omits what he didn't see.

Mr. Brown: If your honor please we want this in the record. Counsel for plaintiff says that he recited there in the part that he read what he saw, that is what he was attempting to do when he was preparing his affidavit to copy the claim of the patent, that he didn't see the guides on the support so he didn't put it in the claim.

Mr. McCaleb: Not at all. That is not what counsel for plaintiff states. Counsel for plaintiff states that the affidavit set forth what he saw and doesn't set forth the claim, however, the claim reads, and the affidavit is the best evidence as to what he saw. As to what the claim is the patent is the best evidence.

Mr. Brown: I think we have enough in the record so we can leave it to the referee and the judge.

Q. Now, will you read the second claim of the patent so the referee may compare the affidavit with the second claim for the same purpose?

A. "In a device of the class described, the combination with a motor driven car, of an axle rotatably mounted in [fol. 122] bearings rigidly attached to said car, wheels fixedly mounted upon said axle, a second axle rotatably mounted in bearings attached to a cross bar pivoted at its

mid center to the frame and adapted to turn to right or left, bolts extending through said cross bar and being provided with adjusting means and springs connected from said bolts to the frame on either side of its center adapted to hold said cross bar normally at right angles to the direction of travel of the car."

The Master: Now, this affidavit reads as follows: "Also, the combination with a motor driven car, of an axle rotatably mounted in bearings, rigidly attached to said car, wheels fixedly mounted upon said axle, a second axle *rotably* mounted in bearings and attached to a cross bar pivoted at its mid center to the frame and adapted to turn to right or left, bolts extending through said cross bar and springs connected from said bolts to the frame on either side of its center adapted to hold said cross bar normally at right angles to the direction of travel of the car." There are two or three words in the beginning of that part not in here.

Q. Now, will you read the third claim for the same purpose?

A. "In a device of the character described, a frame comprising side and end members, an axle journalled in bearings carried by the frame and having wheels thereon, cross members extending transversely of the frame to form support, a cross bar pivotally supported by one of the cross members for swinging movement in a horizontal plane, an axle carrying wheels journalled in support on said pivotal cross bar, guides on said cross bar and extending upwardly and outward to engage the side frame, thereby holding the cross bar in horizontal position, bolts passing transversely through the cross bar on both sides of the pivotal connection between the cross bar and cross members and springs connecting the said bolts with a second cross member to hold said cross bar and the axle carried thereby normally at right angles to the direction of travel of the car, and means for propelling the car carried by the said last mentioned cross member."

The Master: The affidavit reads: "Also, a frame comprising side and end members, an axle journalled in bearings carried by the frame and having wheels thereon, cross

members extending transversely of the frame to form support, a cross bar pivotally supported by one of the cross members for swinging movement in a horizontal plane, an axle carrying wheels journalled in support on said pivotal cross bar and guides extending upwardly and outwardly to [fol. 123] to engage the cross bar, thereby holding the cross bar in horizontal position, bolts passing vertically through the cross bar on both sides of the pivotal connection between the cross bar and cross member and springs connecting with the said bolts with a second cross member to hold said cross bar and the axle carried thereby normally at right angles to the direction of travel of the car, and means for propelling the car carried by said last mentioned cross member."

A. I think I can correct that. It has come to my memory now just what that is. Your frame consists of a journalled frame, channel iron and your guide is a piece of angle iron bid on the web of the journalled frame, and the patent shows an angle iron frame, and these guides are fastened on to these cross bars and rest on this angle iron frame. That is where the difference is.

The defendants' structure has guides on the frame. They are hitched on the frame—not on the cross bar or support. The defendants' structure does not have any guides on the support—it is on the frame. It doesn't have guides on the support engaging the frame—it is on the frame engaging the cross bar. There are not any guide members at all passing on the support or cross bar—only those for the springs is all. Those for the springs I would say are bolts.

At the time I saw the defendants' structure it seems to me like it had bolts except through the cross bar. I cannot say positively—I would not swear to it. Defendants' structure did not have bolts extending transversely. I don't remember whether there were any connecting bolts on defendants' structure for adjusting the tension on the springs—I wouldn't say positively whether there was or not.

Redirect examination:

My statement in the affidavit represents what I saw there at that time. It has been so long ago I am not quite clear on the whole thing. The affidavit was made I think the

same day I was out there. The quotation and statement was not strictly copied from the claim but what I saw there, that is what I saw at the place.

MR. T. W. SPENCER, a witness called for the plaintiff, testified as follows:

Direct examination:

I reside at Wichita, Kansas. At the present time my [fol. 124] business is racing Greyhounds. I was in the business of coursing Greyhounds. I have been running Greyhounds since the fall of 1881. I have been in the business of racing Greyhounds since the fall of 1921. I am acquainted with Owen P. Smith. The first time I ever saw or heard of dog racing was the fall of 1920. I was down here to Tulsa. They had on a course meet here and some fellow was scattering around bills, and said he was going to build a track, and he built a track that winter and I came back then the next spring and I went to Chanute, Kansas, and raced on a track there and then I came down the latter part of May or June and raced down here at Tulsa on a track. If there had been any dog racing prior to 1920 or 1921, dog racing to mechanical lure, I think I would have known it, pretty apt to.

Coursing is where four or five or six fellows go out and have twenty or thirty dogs, and put their names in a hat and pull their names out and the first two that comes out run against each other and the winning dog runs against each other, two dogs at a time. This is not anything like dog racing as carried on now. In coursing a live rabbit was used as a lure. The first device that I saw carrying the dog racing was at Chanute, Kansas. This Chanute track was run by an association. It was a company formed and it was an O. P. Smith rabbit, I mean the same rabbit they had at Tulsa.

I am acquainted with Mr. Shaughnessy. The first time I saw him was at Tulsa in 1921, the latter part of May or the first of June. He was acting secretary of dog racing.

Cross-examination:

I have had considerable experience with Greyhounds and with coursing and racing. In either coursing or racing, with a mechanical lure, the dog runs by sight. The dog follows the course of the rabbit. Where the rabbit goes he tries to follow it, just as close behind the rabbit as he can get. I saw the dog race at Chanute, Kansas, along in the latter part of April, I think, along in the spring of 1921. That was supposed to be an O. P. Smith rabbit. I went up the track to buy this rabbit myself. I did not see O. P. Smith at Tulsa at the Tulsa race track. I do not know whether he had any connection with this track or not in 1920 or 1921, just what they said. They said the Tulsa rabbit was an O. P. Smith rabbit. I never saw O. P. Smith at Chanute, Kansas. On this track at Chanute, the housing for the car that carried the rabbit on an arm was on the outside of the track. The housing was on the outside.

[fol 125] I am familiar with other O. P. Smith tracks. I went from Tulsa to Chicago. I never saw any of the O. P. Smith tracks built with the housing on the inside of the track. I don't know whether there is any advantage of putting the housing on the inside or outside of the track. I never raced on one on the inside. None of my dogs ever raced on a track that had a housing on the inside. I never ran any of my dogs in Kansas City. I never owned any dogs that ran there. I never owned a dog named Snappy Jack. I raced him for another fellow. He ran at the Atlantic City track and the Riverview track at Kansas City. I have never been employed by O. P. Smith or any other tracks in which Mr. Smith was interested.

Mr. Clement O. Gerrisoos, a witness called for the plaintiff, testified as follows:

Direct examination:

I reside at 2744 East 5th Street, Tulsa, Oklahoma; I am a dealer in engineering supplies and do blue print work.

I am a graduate of the University of Oklahoma and later did advance work in the University of Illinois. I took engineering courses in both cases. After graduating at the

University of Illinois, I went directly to Cairo, Illinois, and taught in the high school there until June, 1910. At that time I went to work in East St. Louis for the Republic Iron and Steel Company and the Aluminum Motor Company. I was an engineer and draftsman, construction draftsman, and later on at the Aluminum Motor Company was assistant engineer. I have testified as a witness in a patent case.

I have inspected the dog racing plant of the Magic City Kennel Club of Tulsa, Oklahoma. The last time I made a trip out there was day before yesterday, and previous to that I think it was last fall during September; the exact date, I would have to look in the affidavit I made to get the date. I was at the plant two or three times when it was not in operation. I made one trip down there when it was in operation in the evening. This was all during this period in September of last year. It was during the so-called race meet. I did not observe the conduct of the races until I attended the evening performance. This was during September, the exact date I couldn't give right now, but it was less than a week previous to the day I made the affidavit.

The general method employed by the Magic City Kennel Club in conducting dog races is, they have a pen or box in which they keep individual dogs, and it is just to the right [fol. 126] of the track, and on the inside part of the track they have a housing in which there is a three rail track which conveys a mechanically operated car around this track on the inner side of the track, and this car has a laterally extending arm to the right, in such a manner that it extends out over the race course, and on this arm there is some sort of an object that is spoken of as a rabbit, and may be a rabbit, dummy rabbit. They start the car off and just as it gets a little ways in front of the starting box they have a trip in such a way that all the doors slide up at once. I think it is really one door so that each dog can start out of the starting box at the same time, and make a chase after this object on the center of the track, and in that way it gets a race out of the dogs.

The approximate circumference of the course is somewhere between a quarter and a half mile. The approximate width of the track is about 20', maybe more, 25. The surface of the track is dirt. The housing is situated in re-

lation to the course proper on the inner side of the circle. This housing extends completely around the course. The housing is made of timber. A part of it is down in a trench arrangement in such a way so that the car is really below the real surface of the ground, and to that is timbers extending upward on each side and then boards extending from those timbers, one timber to the other, in such a way as to keep the dirt from filling in to this pit arrangement, and then there is a portion of this housing that extends above the ground, and on the front side I should say, this wall is really what it is. It extends probably 6 to 12" above the ground. On the back side the wall extends at least 12 and maybe more above the ground because the ground on the back side is not filled as high as on the track side, for one thing, and also they have on the back side they have a roof attachment projecting over the top of the track and this roof has a slight slope to the inside. That is away from the track and to assist in supporting, that the purloins of that roof extend back farther than the back wall, probably 12 to 18", and then there is a wooden tie-rod that extends from the back end of that purlion down to the back wall, and tied in that way, in such a way it permits a cantiliver beam supporting this roof, and then on this other edge there is a little projection goes down here that lines with this wall on the track side, in such a way there is left a continuous opening on the track side. I wouldn't say how much that opening is but probably 4" opening.

The projection on the inner side of the housing facing the coursing stands in a vertical plane, approximately 18" to 2' in height. I don't believe that I understood that first ques- [fol. 127] tion. The projection part of the housing extending downward on the course side of housing, is in alignment with the wall and is not over 6". That is carried by the roof part of the housing. The roof and its downward projecting portion is held in operative position by this tie-rod at the back of the purloin of the roof. It is not supported in any way from the course side of the housing.

I made some sketches yesterday of the construction at the Magic City Kennel Club, the first time over there, when they were asking for sketches the other day. Those are free hand sketches and I made a little better this morning on the same idea. I repaired these this morning about an hour and a half ago. This downward projection that I said

lined with the wall on the track side, is this shown right here which I mark "A," the course proper in the sketch is the left side as we face the section. This housing includes vertical posts. The are shown at each side of the drawing. On the track side I marked those posts "D" and on the other side I will mark "C." The housing contains boards; it contains in the first place boards between these uprights on either side, and then also the roof is covered with boards. The supporting members of the roof are designated by marking the purloins "D" and tie-rod is marked "E." The function of this structure marked "D" is a purlion and supports the roof boards as are usually spoken of in a house, and the tie-rod "E" is a tie-rod that ties those together and really supports the roof from the fulcrum, which is one of these uprights in the side as well as upright marked "C" here. This is the cantilever construction which I testified to here. The rails are situated in this housing right at the bottom of this trench in between the uprights. I didn't show the rails in this section but I will mark the rails "F."

The car at the Magic City Kennel Club is made of channel iron and the rear wheels are fixed to this panel iron frame and also about midway between the front and the rear wheels there is located a motor, and then at the front part of this car there is a bolster arrangement in such a way that the axle of the front wheels are tied to this bolster securely. Now this bolster in turn is pivoted to the frame of the car by having this pivoted. The bolster may be swung like the bolster of a wagon. It allows the car to turn either to the right or to the left. I will mark the bolster "G." The pivot in connection with the frame is marked "H." The function of the spring appearing in the sketch is to keep the bolster in straight alignment so that the car normally would desire to go in a straight line because by the tension of the spring on either side would cause the bolster [fol. 128] to be absolutely parallel with the back axle and that causes the car to run in a straight line. Those springs are secured to the parts of the car—those in the car that I saw Sunday, the loop at the end of the spring was hooked to a hole in the bolster. The other ends of the springs were also hooked into a hole. I think they were just hooked into the flange of the channel. They were fastened to the frame

of the car at any rate. This construction corresponds very similar with the construction of the car which I saw last Sunday with the exception, if I remember correctly, the springs were not hooked into the bolts, I mean into the opening, but were just hooked over the top of the bolt. This bolt was carried by the bolster. The channels or channel members appearing in the lower left hand corner of this sketch is really the frame proper of the car. There is no fixed tie between the channel members and the bolster end. However, the bolster is arranged that the big flange of your channels doesn't permit it to tilt downward very far to either side, and then in addition to that they have little lugs welded on to the web of the channel just above your end of the bolster in such a way that it doesn't allow it to fly up very far. In other words it has a slight deviation. I wouldn't say the car which I saw last September had a spring adjustment. The springs were there, though. The purpose of pivoting the front wheel construction of the car is if they did not have that front axle pivoted, when they came to the curved part of the track, why it would be an accident if it wouldn't go off of the track, and if it was loose enough and in going too fast a speed it might continue around the track too at the speed it goes. It would probably go straight ahead and leave the track. When I attended the races out there, they gave the time of the dogs in such a manner that I figured at that time the speed of the car operated at about 40 miles an hour. The car is electrically operated. The motor is an electrical motor. The car is controlled in its path of travel around the housing by a man that occupies a position up above the grandstand. In the Magic City Kennel Club, the arm which carries the rabbit or lure is pivoted to the car end of the arm and in operation it swings out on to the track and up on to kind of an arm rest and I think in some way fastened there so as to make it fixed and firm so it cannot fly back underneath the housing. When the car is in operation it occupies a position to the right of the car out over the track. The outer end of the arm is not operated in any way. The arm is maintained in its operative position by this arm rest as a fulcrum on the track side of the frame, and then the arm extends on over that rest to the center of the car and is pivoted at the center of the car by a large

casting. When the car is in operation the arm has a vi- [fol. 129] bration, other than that it doesn't move except as the car carries it around the race track. I couldn't say what movement is important to the arm at the conclusion of the race because as quick as the car would get to the end of the race they shifted a sheet across the track and stopped the dogs.

As I observed the construction last September, the arm was capable of swinging horizontally. It did not swing horizontally while the car was in operation during the racing of the dogs. There was no construction that I know of employed for controlling the braking of the car. I presume the speed of the car was regulated by the current. The controllers on the car were situated in a cupalo at the top of the grandstand.

Cross-examination.

I was at the tract of the Magic City Kennel Club during September, 1927, at least three times and it might have been four, I am not sure but I was down there three different times. I was there about 20 or 30 minutes at two of the times and the third time I was there during one entire evening during the performance. I don't say that was the third time. It was one of the three times. I cannot remember whether I visited the second time for the inspection or before, but I was there during one evening during the performance and occupied the space in front of the grand stand. That was across the track from the housing where the car operates, between the grand stand and the fence on the outer side of the track. The car was on the side of the track opposite that on which I was located during the entire evening. I had no opportunity at that time to make a mechanical inspection of the car or arm. I saw the operation of the races. I saw the rabbit travel along the track and the dogs following the rabbit. The sheet for stopping the dogs was located at the south end approximately, they change the position about to the length of the race, but a majority of the time it was approximately at the south end just as they turned going around. It was around the turn just after the finish. If I am not mistaken they changed the position of the sheet for different lengths of racing, but the majority of the time it stayed at

I don't recall whether there was any kind of timbers fastened at the end of the purlion and the boards fastened to those timbers or whether the boards were fastened to the side of the purlions directly. I am not positive about how far this side of the wall extended down below the roof line. I just know there was a projection there, it doesn't seem to me it was over six inches—six inches below the lower surface of the purlions of the roof. The roof boards were on top of the purlions, making a thickness of the roof consisting of the thickness of the purlions and the boards on top of the purlions, and at the track end of the purlions there was a projection down from the other part of the side. According to my recollection, that part of the wall extended below the lower surface of the purlions six inches.

Referring to the sketch which I made this morning marked plaintiff's Exhibit 7: that the upper part of the side wall of the housing at the track side is set back from the edge of the roof, I couldn't say as to that. That is a typical section—not intended to be an accurate representation of

this housing, not a bit, not to the nicety of the point of view of construction.

I introduced this sketch as a typical illustration of that housing. In that particular point it is not an exact illustration of that housing. The general principle is an exact illustration of that housing. By general principle I mean the form of support of the roof generally and also at the particular point where a person goes over the roof. I wouldn't say absolutely that there is a little projection there, at the roof from the track side including the construction of that inner side wall.

I haven't seen the sketch of the housing made yesterday by Mr. Keen. In a general way I don't see that there is a great deal of difference in the two sketches in regard to the housing. I am a mechanical engineer and have had ex- [fol. 132] perience in construction work. I can't see a great deal of difference between the two sketches. I have a projection there on this side and he doesn't have any. I have the roof extending over the side wall projection that extends down and line with the retaining wall on the track side. Inasmuch as Mr. Keen has the purlion so wide I wouldn't consider that a projection. There is a fulcrum board there. He has made his purlion so big it is unnecessary for a projection. From the way Mr. Keen has represented those purlions it looks to me like they represent two by fours with a four inch way in a vertical position. Poor engineering or building construction would depend entirely how far apart you would put your purlions. I don't know how far apart the purlions are. I am quite sure they are not two by fours. Mr. Keen doesn't have these labeled, and it is a free hand sketch and I don't know that he intended to represent two by fours. Mine represents two by twos. Comparing the two drawings it looks like his represents two by fours. He doesn't show any projection down from the two by fours, but he has a board at the end of the two by fours. I think the sketch I made more clearly represents defendant's structure. I won't say Mr. Keen is mistaken. His idea of representation may be different. His representation is a little different. In a general way they are the same. I don't know how to answer that question with regard to these two sketches. I made some sketches over there yesterday during the time you were asking Mr. Keen, and just at the close here of the

meeting yesterday, why Mr. McDowell asked if I would make some sketches, and I told him I had some free hand sketches or I had sketched off some, and he said that is perfectly all right and he says you make them with T-square and angles and make them a little neater.

Q. Was there anything said about the side wall of the housing?

A. He merely asked me if there wasn't, as I remember, a projection down on that roof.

We had this conversation out there. I was in here at the time Mr. Keen's sketch was made, I knew that. Other than that the matter of that projection was not discussed between Mr. McDowell and me. He asked me that specific question and I told him that and I had shown it on my free hand sketch that I made over there during the time.

The idea of one pair of wheels being pivoted so the wheels turned on a center pivot is not new. If it wasn't for that pivot when the car came to a turn the car would be pretty apt to jump off of the track because it couldn't turn [fol. 133] around the curve. That is what the king bolt is for in defendants' car, the same as it is in the wagon or buggy. If a wagon or buggy didn't have a fifth wheel when it came to a curve in the road it would be pretty apt to go straight ahead. That has been used a good many years, as long as I have known anything about it, it has.

When I saw the construction last September, the springs were fastened to the back side of the bolster. The front axle was fastened to this bolster and then these springs were fixed or fastened to the back side of this bolster, one in each, and then the other end of each spring ran diagonal back and tied onto the frame, under the angle iron on opposite sides of the frame, tied onto the side members—the sides of the frame, I am sure of that. I will go on record and say the rear end of those springs were fastened to the side members of the frame, that is my recollection.

It is in my affidavit that those springs were fastened at the end of the bolster by bolts. Sunday when I was down there I took particular notice of the fact that the springs were hooked into holes in the back side of the bolster. I wouldn't say it has been changed since I saw it last September. I do know the time I was down there Sunday I only

saw one car and when I was down there last September they had two cars. Now I might have seen opposite cars at those times, and at the same time, inasmuch as that is not there and as careful as I was in going over the affidavit and in making a second trip alone I don't think I would overlook that point. At any rate it was fastened to the bolster.

I don't want to testify different to my affidavit. I don't want to testify to a lie. The only thing I can say is that they were securely fastened to the bolster. They were just fastened to the bolster. I couldn't tell how but inasmuch as it is in my affidavit they were bolts I think I must have seen the bolts. I haven't any recollection now of the fact that I absolutely saw a bolt. I couldn't say what they were fastened to at their rear ends, last September. I just know they diagonally went back to the frame work. I am sure they went to the frame work. They went back to the frame work of the car and at the same time they did take a diagonal position. I wouldn't say absolutely whether there was or was not a cross member that they might have been tied into. As I recall it, the springs did not have any means of adjusting last September. The sketch that I made, plaintiff's Exhibit 7, differs in the method of fastening the springs with the bolster and car frame than the arrange- [fol. 134] ment described in my affidavit. I thought I made it clear a while ago regarding the arrangement of the springs in my affidavit, and what I am testifying now. They had two cars down there and Sunday I saw one car. It might be last September I saw the opposite car. The one I saw Sunday had the end of the spring hooked into a hole and that is the one I have represented there. The holes were in the back side of the bolster. I have shown the rear end of the springs were in the inner members at the side of the frame. That is what I saw Sunday.

The night I was out at the races I don't know as I absolutely watched the rabbit, particularly I call it rabbit, go behind the grand stand. As far as I could tell the rabbit remained practically stationary from a vertical standpoint during its travel over the track. There was probably little vibration but your eye didn't follow it. My eye wouldn't see any vibration that night. There wasn't anything under the rabbit. I didn't see anything supporting the arm at all during the operation, just stuck in under the housing. The

arm outside of the housing was six to ten feet long, the arm was fulcrumed on some member at the side of the car, it was pivoted onto the car, it was pivoted on the vertical axis so the arm would swing horizontally. The horizontal swinging was for the purpose whenever the car wasn't in use, at the time I saw it, the arm swung back underneath the housing. As to exactly why, I don't know because it was of such material it would not deteriorate out in the weather. I couldn't see whether or not the arm was swung back under the housing at any other time except when it was not used.

The pivot arrangement was a casting with a spring underneath and to get it upon to the rest, kind of a back rest, it had to be raised just a little, and I judge from that spring going around here would force that up and when it goes on to that rest I think that made it sort of a fixed position. I don't know just exactly what it was except it was fastened to that inner end and rested on this member of the side frame as a fulcrum.

Redirect examination:

When I prepared this sketch I did not intend the same to be a working drawing. I prepared it to represent typical ideas as I saw them out there. It is quite possible that the sketch does not correspond in every particular with the construction I saw. There might be deviations in the actual construction from that sketch because I have no dimensions on it or no scales, anything of that kind. To have the diagonal position on there this makes a difference. As to [fol. 135] absolutely tying it to the side frame or to a curved member, would be no different. I do not recall any types of vehicles employing pivot bolsters using springs. I do not recall any earlier constructions using a bolster guide to the soldered end.

Examination by the Master:

The bolster and axle arrangement pivot together. They are fastened together so that when the bolster turns the axle turns. It doesn't turn like a wagon; you see the wall is above this bolster and your journals are fastened. The principle is an underslung car. You see here is your journal here and here is your bolster here. Then you see these journals move with that and here is your king bolt right

It is my duty to see that there is no grounds or anything in the wiring of the motor. I take care of the rabbit all during the running of the dog races, and no one handles it but me any other time. I have charge of it at all times; no one else works on it in any respect. I have held this position since the 15th of April, 1928, I believe somewhere around there, couldn't tell just exactly what date.

The forward construction of the device has a frame, steel frame, four wheels, motor sets on the rear of the frame and the gear off of the end of the motor shaft drives the gear on the rear wheels which fastens the rear axle slips through. You get your current off of the third rail which drives your motor forward and the track, I cannot tell exactly just how far it sets apart. There are no bolts holding the front axle to springs which gives it play, acts as a turn table, with two holes bored in a cross member. The end of the frame swing is hooked in the cross member in each end, front and rear of each spring, that gives your front wheel. One of these cross members carries the axle which is pivoted on a king bolt. The cross member on which the motor sets on, there is a hole drilled in each end of this cross member and the end of the spring is pushed down in there, hooks over in this hole. It doesn't hook in the frame at all. You have two cross members, one bridged on the frame and one that is pivoted on this king bolt. The springs are hooked at their respective ends in the pivoted cross member and also in a rigid cross member. There is no bolt in the springs at all. They have never had a bolt in them. They are free from bolts. There has never been a bolt. These holes were drilled for the purpose for these ends of these springs which hooks in the cross member and they set approximately two inches from the frame.

We have two cars out there. The two cars were there when I first went to the track. Both cars are just the same. You could use either part on either car. Both cars are just the same and I assembled both cars when I went there in April, 1928. The springs were connected the same way on both cars. There has never been a change made since I came there in April, 1928.

[fol. 137] Cross-examination:

I take care of the mechanical end of this car. I keep it in

axle sets in the frame work of the car freely, the cross member works freely in the frame. It is not bolted, free from all bolts, it give it room to play, make the curve, and the springs are hooked in these holes, a hook in each end of the spring which hooks into these holes to give it proper play. There is no bolt in the member at its center so it may turn or swing horizontally. The axle doesn't turn only with the cross member. It sets in a bearing, the axle what you call a bearing. These bearings are fastened on to these cross members. The cross member is secured to the frame of the car by setting in a slot two pieces there, it works in between those two slots, gives it room to play. Just each end of the cross member may be turned back and forth horizontally. It cannot go back or forward. The axle extends above the frame of the truck. It sets at the end two inches back, four inches back from the end of the frame. The bottom of the truck has a place there for this cross member to ride; there is another piece then from this cross member which gives it room; it is not bolted; it is free from bolts in the end to give it room to play there. There is no bolt set in the center anywhere like that shown in plaintiff's Exhibit No. 7, indicated at H in that drawing. The Magic City car does not employ a construction anything like that shown in the left hand corner of this sketch. The wheels guide the ends of the cross member carrying the front axle. The wheels are mounted on the axle, they are slipped on there. The wheels turn with the axle. The axle has a gear on it. To tell the truth about it I never particularly paid any attention whether it was keyed on or how.

Mr. John L. Shaughnessy, a witness called for the defendants, testified as follows:

Direct examination:

I am 44 years old and reside at 7 West 17th Street, Tulsa, Oklahoma. I am at the present time general manager of the Magic City Kennel Club. I have been general manager since September, 1927.

The Club was organized in July of 1927. I have held my present position since the organization of the company. I drew some salary all during construction, so much a week

then, and I got an increase of that during the racing period. [fol. 138] The Magic City Kennel Club was organized for the purpose of dog racing. I was actually conducted dog racing about six and one-half or seven miles south on the Jenks road known as the South Peoria highway. Started there last September 11th. This is south of the City of Tulsa in Tulsa County.

I have had previous experience in operating similar concerns. My first experience with dog racing started with O. P. Smith when he came here in 1920. He opened the races on February 22, 1921, at West Tulsa, across the bridge over there. I think it was in the county at that time, three or four miles west of the city.

In my previous experience with dog racing I first became secretary of a company that was formed here in 1920, that afterwards started the construction of a dog race in October, 1920. It was finished and ready to operate the 22nd of February, 1921. I was secretary of the company and also racing secretary. In other words, I classed the dogs that were entered in the races. It was my first experience in that line, and I think the first meeting we had here continued for thirty-one days and was held in the afternoons. My next experience with dog racing was in East St. Louis in the fall of 1921, October.

At the track I operated in 1921 I used an outside rabbit which ran on a wheel on the dirt part of the track. Ran over the dirt part of the racing track. An outside rabbit is a rabbit on the end of an arm that runs around the outer side of a dog racing course. The equipment and operation had a tower at one end of the track where an electrician was stationed up there. I imagine it was about thirty feet from the ground with an opening so he could look out and get a view of where the rabbit was going around the course. The dogs were started out of boxes set in the center field when not in use, and you rolled them out and had to roll them back in again to get them out of the way of the dogs. The rabbit disappeared in a den in full sight of the dogs at the end of the stretch. The den was located on the outer side of the race track on the straight stretch in full sight of the dogs from the time they made the turn towards home they could see where it was. The rabbit disappeared into a little box like den that had a door; set in and had a latch with a trip on it and as the

arm passed through this trap door it tripped this latch and the door closed and the truck ran off on a continuous rail switch at the end of the course. The arm was made out of a piece of three eighths inch, either water or gas pipe with a hing on one end of it. The arm was hinged to a [fol. 139] sort of a post of some kind about the center of the truck. It ran around the outer side of the race course, operated with a third rail system of electricity. The rails of the tracks were located almost level with the top of the ground. The housing was raised up over the ground I should say anyway from two and a half to three and a half feet at the highest point. It was the outer side or side closest to the grand stand; was supported at that time with guy wires all the way around the course fastened to the front end of the housing and on the back with four by fours which set up higher than the housing itself, and whenever the housing began to sag they had to pull that wire out and reinforce again. All wire was held in place by the use of one of those staples driven in the top of four by fours, possibly about the center of it, maybe in the rear of it.

The wheel on the arm in those days run along on the dirt track and the purpose of hinging the arm was to let it give when it would hit a high spot or pebble, there would have to be something give away or break the arm.' The arm was hinged and swung vertically. We had some trouble with the operation over there. Several things happened over there. The truck was faulty and caught the rails quite a number of times. The dogs ran up on the housing and got skinned up on those guy wires they had on there. The truck during the escape went through the rear end of the door there and tore it out. We had to call the races off several times on account of defects in mechanism. Sometimes have them waiting around there until eleven or twelve o'clock trying to run a race and have to send them home and let them all in for nothing the next night. The wheel that supported the outer end, the loose end, rode on the dirt part of the track. If there was any unevenness there in the track it would be subject to it. That was the reason of the hinge.

The condition of the track all depends on the elements of the weather. If it stays dry you are all right; if it is wet, unless you have got something to take care of the condition

of those wheels and things you might not be able to operate it. We had some trouble over at West Tulsa on account of the condition of the track. Any time that track would be muddy we couldn't run them. The wheel was like an automobile tire, unless you had skids on it it wouldn't go through. I am pretty certain we had that happen over there during the life of the company, the life of the racing period over a couple of years.

O. P. Smith superintended the construction, the electrical end, of the track and equipment at West Tulsa in 1920. The [fol. 140] name of the company was Mid-Continent Amusement Company.

When Mr. Smith came here he led Mr. Allison and myself to believe that he had a patent. We supposed that he had, we didn't know any different and at the time the patent stated 1038, whatever the numbers are, I never had seen it and I don't believe that Mr. Allison ever saw; however Mr. Allison proceeded to put in a dog track on the strength of what Mr. Smith said he had. In 1920 and 1921 Mr. Allison constructed a dog track in Tulsa under the apparent rights represented by the minutes of this company. He put in a quarter of a mile track, grand stand, I should say the grand stand would seat possibly fifteen hundred people, maybe two thousand; put in an outside housing with the arm extended out with a wheel on it; what is otherwise known as an outside rabbit on a quarter of a mile racing track. We put in six starting cages, six of them; Mr. Smith supervised all of that part of the construction. The only part that he didn't have much to say about was possibly the grand stand, and there was quite a lot of argument between Mr. Smith and the grand stand construction foreman, and we not know Mr. Smith very well we sided in with him the best we could and we had plenty of argument before we got through with other people; and the matter of starting cages, he had springs he was trying to raise it with and I should say we spent about forty or fifty dollars buying the springs to put on the supports at the bottom of the cage and every time you pulled it down it spread the spring and would not raise the door over a foot and a half, so I suggested we use the airplane shock absorber, and he wanted to run me off the ground for making the suggestion, but we finally had to do it in order to get the door to work. The

meeting finally opened up the 22nd of February and ran about thirty-one days and Mr. Smith left Tulsa I think in either March or April, 1921, and went to East St. Louis. We had some mechanical defects there that were hard to correct, such as the dogs catching the rabbit and sometimes the car door on the escape would not go down, and it all seemed to be more or less in an experimental stage at that time. It is a well known fact the dog follows the line of the rabbit. They run by sight and do not run by scent and they will get as close to the rabbit as they can. With an outside rabbit they run right up close to where the wheel extends out, as close as they can get to it. With an outside rabbit construction the rabbit would disappear at the end of the home stretch, the front stretch, through a trap door in full view of the dogs; the dogs can see it. The dogs will go [fol. 141] right up to the point of disappearance of the rabbit as close as they can get to it; that is what they are chasing it for. They follow it with full speed up to that. They stop as soon as the rabbit gets out of sight. Some of them stop before the finish line if they see it go in the escape. If there are any faults in the mechanism there is a tendency of injury to the dogs in relation to the outside and inside rabbit. They will injure themselves by getting close to the arm or get caught underneath that housing if the door didn't work, and if they didn't have the juice off he would be electrocuted. I don't know of any electrocution.

The dogs have been injured by the arm where it would stop around while running the race. Here in 1921, at the first meeting, the dogs almost caught the rabbit and the impact of it threw them upon *on* the housing, and I thought we were going to have a lawsuit over it but didn't, however.

I am familiar with the construction of the car and the housing as employed by the Magis City Kennel Club. As to whether plaintiff's Exhibit No. 7 correctly represents the housing used at the track of the Magic City Kennel Club, I can say the housing used out there with the exception of the rod you see there, which is called a personal cross over, walk way, we have two of those there. We don't have this piece of wood sticking out at this end on here; we don't bring this as far down here in the back as this shows; we have a slight slope to the housing on the inside for drainage purposes if it rains. The housing out there also contains a small wire

fence around the end of it and above it supported by two by twos. I don't mean two personal cross overs but two of those supports. From this drawing the piece of wood sticking out at this end apparently means the roof overlaps this piece hanging down here. We have a piece hanging down from our roof, but it is flush with the housing, the outer end. The roof of this housing I think this is one by fours matched against the outer edge of it flush with the outer edge. The one by four is fastened to the outer edge of the housing.

The roof construction of our housing has beaded ceiling covering supported with two by fours set straight across, flat ways. The two by fours set over there and the ceiling nailed to the top of it, up and down, and the ends of the two by fours at the track end of the housing are not sticking out. At the end of the two by fours we have this one by four piece there nailed to the end of the two by fours. The side wall of the housing is nailed to the roof. That is what I mean by the one by four fastened on the ends of the two by fours.

[fol. 142] Plaintiff's Exhibit No. 5 more closely represents the roof of defendants' structure than plaintiff's Exhibit No. 7. Plaintiff's Exhibit No. 5 is a fairly accurate representation of the roof there, with the exception it slopes more than that, the inside, and has the fence on this end of it. But it omits this other board along in here, this is not on there. This I take it is the two by four cross way. One exhibit omits the one by four pieces on this side, doesn't show them, and this one here apparently doesn't show the two by fours that supports the roof—plaintiff's Exhibit 7. I take it this is the ceiling; I don't know what it is. Neither of the sketches exactly represent the housing at the Magic City track. Neither one of them are exactly like the housing at the Magic City track, insofar as the roof is concerned.

I am familiar with the construction of the car, the traction car, employed at the Magic City track. The wheels are mounted on the car by an axle set through there with a journal on each side with bearings which permit the wheels to go round, and have two non-adjustable springs on there. The springs are fastened on to the cross bar by a hole drilled in both cross bars; on the ends of the spring there is sort of a ring and put them through those holes. They fasten from one cross bar to the other with a slight diagonal fastening

We have two cars there at the track. We have never had more than two. These springs have been on both of these cars since the cars were first used at the track. They have been connected with the cross bars in the same way during all of that time. There have never been any changes made in connecting the springs with the cross bars. Both cars are equipped in the same way in that respect. The traction car used by the Magic City Kennel Club is on the inner side of the race course. We have particular reason for placing the track on the inside. We have two reasons for that, one is faster time can be made because the dogs follow the line of the hare and the hare being on the inside makes them run closer to the rail all the way around.

The other reason is that when the hare is taken from the track it is taken around the lower turn where we have the housing raised for a distance of about fifty to seventy-five feet which puts the dogs to a more or less guess as to where that rabbit is going to disappear and will naturally make them come around that turn. The rabbit disappears under the housing and they stop over there at a curtain. The escape of the rabbit or the place where the housing is raised I should say would be about fifty to one hundred feet [fol. 143] from where the curtain is. The curtain is on the far side of the escape. And another reason of the inside rabbit is that it will eliminate boxing or fighting among the dogs, fifty to seventy-five per cent less than an outside rabbit. In other words it is a well known fact that when dogs box or fight they go to the outside of the race track, and the inside rabbit cuts down this class of racing as I said fifty to seventy-five per cent over the outside rabbit for the simple reason the lure being on the inside they run closer to the rail and they are not near as bad to fight as the other way.

The rabbit is caused to disappear with the inside arrangement of the car by a little loop iron that is fastened on to four by fours and it hits a trip which causes the spring that has a tension on the pivot and piece of rubber under there draws it back underneath the housing. The arm is fastened around on the truck and lower part of the pivot and also to another support of the frame in order to give it the proper tension. The arm is pivoted under the car so as to swing horizontally instead of up and down. It don't move up and down at all. It goes straight under and drops down five or six inches after it gets inside into a

socket. We cause the rabbit to drop down after it gets into the housing to prevent the rabbit being torn off by the two by fours on the top of the housing. If it went in there straight it would be torn off by the two by four supports. It not only has a horizontal movement but a vertical movement after it gets in the housing.

I don't know where the arm could be hinged if it is. Just on that bar in there and it drops right into a socket by aid of a spring and shock absorber, rubber. It takes that five or six-inch drop in there and sets down in a socket and it cannot move until it is lifted up again.

I don't know whether the car or the arm we are using at the Magic City track is a patented construction. I have got a patent from the United States government on the arm and pivotal escape. I have a copy of that patent here. The escape and arm and the mounting on the arm of the car at the Magic City track corresponds to the disclosures in the patent.

The judge's stand is about from eighty to one hundred feet back of the turn and the rabbit goes around that turn to any place from fifty to one hundred feet or maybe one hundred and fifty feet before it disappears, but it disappears around the turn and out of sight of the dogs that are running on the straight stretch. A dog in other words finishes down there and going into that turn, if he was behind he would not be able to see that rabbit disappear. The [fol. 144] sheet is located fifty to one hundred feet the other side of the point where the rabbit disappears, around the turn. It might be close to midway of the turn. The judge's stand is on the straight way. The rabbit disappears at a point between th judge's stand and the stopping sheet. We have never changed the position of the sheet on the track. We never change the position of the point at which the rabbit disappears.

The difference between the support ot an arm that carries the rabbit or wheel which runs on the track and the arm employed by the defendants which does not include the wheel for suporting the arm under the rabbit is that the rabbit, the arm rather that has a wheel under the end as it runs over the track, it doesn't have any vibration. It is unnatural for a rabbit to run that way, and a rabbit in the field, or any place he goes, hops up and down. My arm has no wheel, naturally the vibration makes it jump up and

down, gives the rabbit more of a life like appearance to the dogs; that is my contention.

Cross-examination:

I first heard about dog racing business in 1920; that is mechanical lures they call them, when Mr. Smith came here. I saw some coursing of dogs prior to that time. We used to have them out here at the Jersey Farm out east of town here. That was back in 1920, and then they held the national meef over here right adjacent to the ground where we finally put in a dog track. I didn't see this one but Smith said he had put one in in California. It was either 1919 or 1920 but I think it was 1920 if I am not mistaken.

I was associated with Mr. Smith in this matter through Mr. Allison. I was Mr. Allison's secretary and always with him at that time.

This track was opened the first meeting, February 22, 1921, and they ran thirty-one racing days, afternoon, Sundays excluded, didn't run on Sunday. We opened it again and run a nine-day meeting I think in May, and we closed and opened up again in June and ran awhile, and then I think we had a little lay off, and then put in a night system and started racing at night. However, I am not so sure about that night racing. I know we put in night racing there but it might have been the next year but I believe it was in 1921. I know we had two or three meetings in 1921, maybe four. These meetings were more or less successful with the exception of some break down occasionally. They caused some delay and dissatisfaction among the patrons and some-[fol. 145] times among the dog men. It resulted in serious delay in operation of the race. The electrician didn't know what was the matter with it, and it took all the way from six to twelve hours to correct the condition. The track was never out of commission longer than one night or day. I don't remember the exact nature of the disturbances but something that stopped the operation anyway; we couldn't hold night races.

The track of the Mid-Continent Amusement Company had an outside housing. It is advantageous in the operation of an amusement of this character for the spectators to have a clear view of the dogs during their travel around the course. The view of the spectators from the grand stand

is not any better with an outside housing than with an inside housing. My inside housing doesn't obscure the spectators' view of the dogs while the latter are going around the back stretch. From the grand stand you can see the dogs clearly as they pass around the back stretch of our track. You can see every foot of the track. There may be parts of the track they may not see the lure, I wouldn't say as to that, standing on the ground they wouldn't but if you are in the grand stand you would. The length of the arm of the car supporting the lure as used by the Magic City Kennel Club is close to seven feet all told. About four or five feet projects beyond the housing on the track.

The width of the track is twenty-three to twenty-five feet. I think the lure projects out a little less than one-fourth of the distance of the width of the track. It is a tendency on the part of the dogs in following that lure to closely stay or adhere to the side of the housing so as to be in line with the lure. The dogs are not obscured by the housing as the lure passes around the back stretch. You can see the colors plainly. If you are in the grand stand you can see the position of the dogs at all times during the operation of the race. Of course, if you are behind anybody, anybody in front of you you cannot. You could see the dogs I think with outside housing the same as with mine, the same way.

The operator of the course is situated on the roof, center of the grand stand. He is up fifty feet. The purpose of that elevation is to enable him to see and keep the rabbit ahead of the dogs. He must keep the rabbit ahead of the dogs at a certain distance and does that by operating a controller which governs the operation of the electrical motor of the car.

The height of the wall of the housing facing the course from the ground is about a four-inch opening there and possibly extends five or six inches above that opening. The roof [fol. 146] of the housing on the inner side of the course is about twelve inches all told from the dirt to the top and above that there is a fence about two or two and one-half feet supported by two by twos. It is a wire fence. Measuring from the track to the top of the wire fence on top of the housing is about two feet ten inches. I don't know what is the average height of the greyhounds. I couldn't say exactly because I never did measure one.

I couldn't say off-hand what the length of the arm was operated by the car used in the track over at West Tulsa in 1921. I would say the arm terminated about four to six feet from the housing. I guess the arm was a little longer than the arm we are using. It might be an advantage to have the lure as far out in the center of the track as possible on an outside but not on inside housing.

I want to keep the dogs on the inside of the track. I want them to finish on the inside of the track as close to the housing as possible. I want to keep them there all the way around the course. It makes the race shorter and closer finishes. If the dog follows the fence he has the advantage over the dogs on the outside if he has speed, without a doubt. That is true in the racing of horses as well as dogs.

It is necessary in dog racing to keep the lure in sight of the dogs at all times. Sometimes some dogs way back might lose sight of the lure but they have a tendency to follow it through anyway. I have seen them run it without nothing on there at all, the lure hidden underneath the housing. I have seen that at Atlantic City.

The diameter of our track is the same all the way around. The distance of the course across the curved end from the outside of the housing at one side to the outside of the housing at the other is about two hundred forty-seven feet or more. The center field is that wide or maybe a little wider. The curve is three hundred ninety-six feet around. The lure is positioned four to five feet from the front of the housing.

I haven't noticed the dogs ever losing sight of the lure as it rounded the curve. If the electrician run the lure about one hundred fifty feet ahead of the dogs there might be a tendency for the dogs to slow up. The lure should be thirty to forty feet ahead of the dogs in rounding a curve for the dogs to see the lure. The lure is kept ahead of the leading dog about fifteen to thirty feet; mostly around fifteen feet; sometimes less, according to the speed of the dog. I have seen quite a lot of dogs bunch up where you [fol. 147] could throw a blanket over them. I have seen some fields where all eight of them come down a part. They separate on an outside rabbit quite a bit; the inside rabbit not near so much.

The lure supporting arm at the Magic City Kennel Club is made of channel iron. The arm vibrates all the way around the course. A channel iron member is strong enough

but there is enough vibration at the seat of the car to give it the vibration. The purpose of it is to give vibration, that is what I want. You get vibration from a pipe or anything you want to. A flat bar would bend on you. You can get any kind of material you want to and if you don't make it heavy enough it will bend. I don't care what you get. I never tried a flat leaf spring. That kind of vibration would not be any good to me. If the lure vibrated excessively a disadvantageous condition would exist.

In the Magic City Kennel Club construction the roof ends flush with the wall of the housing facing toward the track. The sketch, plaintiff's Exhibit 7, does not show out there flush. There is a one by four depending member from the roof of our structure. It is about four inches in heighth. The strip is placed vertically and is exposed right above the continuous opening or slot through which the arm carrying the lure projects. The depending one by four member is nailed to the sides—the *the* studding upon the part of the roof. We use two by fours across the top, cantilever in the rear. It isn't the kind of cantilever that is shown at E in the sketch. He has to get a support here. The member E is connected through the member marked C and ends at post C. It isn't connected to the ties on which the rails are carried. The member E is employed to hold the roof. The roof is supported only at the back side; it isn't supported at all at the track side of the housing. We employ a covered housing at the Magic City Kennel Club. The car operated in the housing is not exposed to the view of the dogs. We have some traps there we use occasionally, for the purpose of retiring and to afford access to the car. Our housing does not include downwardly extending girt rods at intervals—just in one place, we use them for employees passing through there to the inside of the course to sustain the weight of people walking over the housing. There is an additional reinforcement at that one particular spot.

We get the cars which carry the lure in St. Louis, Atlantic City, San Francisco, Chicago and possibly at Detroit. I got mine in St. Louis from the Ideal Machine & Tool Company.

[fol. 148] I don't know what the view in the lower left hand corner of plaintiff's Exhibit 7 is. The truck is square

which we use at the Magic City Kennel Club. I don't get this, this drawing here. I don't know what this is.

We employ axles and journals between the wheels for mounting the truck on wheels. The king bolt in the center supports the axle. The king bolt there is for the purpose of any little forward or backward movement around the turn. I couldn't say about the cross bar or bolster swinging horizontally by reason of that king bolt; I have never seen that. I have seen the car outside the housing but not in running operation at high speed. It would be very difficult for me to see that under the housing.

Mr. Brown: Your honor, may I interrupt the proceedings at this point. We realize and have realized that the burden is on the plaintiff to prove the construction of the defendants' housing and the traction car and other equipment that they charge to be an infringement of the patent in suit, and they have attempted in various ways to do this, but I don't believe that there is any clear understanding in the mind of the court as to just what that construction is. I don't think the plaintiff has sustained that burden and I believe the evidence up to this time is wholly insufficient to support the case and it is not incumbent upon the defendant to go to the aid of the plaintiff in that respect, but in order that this uncertainty as to the construction may be clear we are willing to submit photographs of our construction of the car and of the housing. For your honor's information I would like to hand those to counsel for the plaintiff.

The Master: I am very glad you made that suggestion.

Mr. McDowell: It should be noted in the record that every effort has been made to procure photographs of the alleged infringing structure and that the photographer has been unable to secure the photograph although I understand that small photographs were submitted with the affidavits when the case was originally filed.

The Master: Well, if they are supplying them it will remove the point of uncertainty about the construction.

Mr. Brown: I might add that we have never been asked for those photographs.

The photographs represent the housing and the truck. Exhibit No. 32 shows the truck and rabbit arm in a retract-

[fol. 143] ing position. The purpose of the upright standard is to bring it back so it will set in the socket here to keep it stationary. This is put under a tension when it is fastened here, to bring the arm back underneath the housing. The arm does not swing about the upright post to which the coil spring is attached at any time. This arm when it comes in here sets down in this socket. It is not applicable at all because the socket holds it in place.

When the arm is extended to an upright position at right angles to the car the arm is lifted up, comes on the top of the base of the socket here, then it is swung around into a catch lock here, which is a spring on the side that holds it in place there and the trip is also pivoted on the side which passes through an arm that goes out from the housing around the turn in order to release the catch lock which permits the arm to disappear and retrack under the housing. The arm is connected on this side of the frame close to the track into the catch lock. The post that supports the arm is about the center of the cross bar; about the center of the frame.

The arm is supported both by the upstanding post and the latch or catch frame at one side of the car when it is in position for operation, racing operation.

In the photograph, defendants' Exhibit 32, you can just about see the front axle of the car as being located in a position above the car frame. It appears to be a little bit above it. You cannot see the pivoted connection between the support of the front axle and the frame of the car. The purpose of the spring surrounding the upper end of the post on which the arm is pivotally carried is to make it set down in the socket. It doesn't have a thing to do with the retraction of the arm for placing the arm to this retracted position. Following the release of the latch there is a piece of shock absorber rubber fastened in here which is also fastened to another support around here, so when the arm is pulled out there is a tension on this shock absorber rubber. In other words you are pulling the rubber around in the other position; it stretches the rubber so when the release comes through there is enough tension there to force that arm to disappear under the housing from the sight of the dogs and go down into the socket provided there. This spring here merely holds it down in the socket. That is what the spring is for, so when it sets down in the socket it will stay down

there. When it is set up the spring is overcome and it expands from the pressure of the rubber.

The rabbit at the outer end of the arm is attached with [fol. 150] a bolt about an inch and a half or two inches long, maybe three inches as shown in the photograph, defendants' Exhibit 30. This bolt passes through the rabbit here. They have a little wooden plate underneath there. The wooden plate is set right down in the channel iron. I don't know the length of the plate, it isn't very wide. You don't refer to that place as a saddle, it isn't big enough for a saddle. The opening shown in the housing at the back end of the rabbit is a trap door merely to let the electrician's helper get in there to pull the rabbit up and set it out in position, or to repair the track; get water out of it or anything that might happen to wash in there from the side. There is no particular need for the lure carrying arm being wrapped as shown in the photograph, Exhibit 31. That is the casting kind of arm we are using now. The wrapping does not have any effect on the vibration of the arm; it has no purpose so far as I know.

Redirect examination:

You cannot tell there is a fence there on the far side of the track. It is an open wire fence and it is very transparent. Unless you know there is a fence there you couldn't hardly tell there is one there. You can see the dogs very clearly through the fence.

In the track built under the Smith patent the housing was on the outside of the track. If you transferred the housing of the Smith track to the inside of the track so that it ran around the track on the inside the effect would be, as far as observing a race is concerned, you could see it on the front stretch but not on the back stretch, because the housing is high at one end and slopes off down this way. The housing on the outside is built up to three or four feet, the top of it, and it slopes down this way to a point, and then there is an opening and then the dirt part of the track, and that is built on the outside of the race course. If you were to move that same housing and put it on the inside you could see the dogs on the front stretch but this part of it would be in your way on the back stretch, the back side of it. This is not true of our housing because my housing is

almost flat across the top. It doesn't extend as high up above the level of the track because my trench is buried below the ground and the trench we had over here on the Smith track was laid almost on top of the ground. I don't think there is the distance between the surface of the track and the roof in our housing that there is in the Smith housing. We use the roof on our housing in case of rain to shut the water off so the trench won't get full of water, for the [fol. 151] same purpose you use a roof on anything else; a man living in a house would want a roof on it in case of rain.

The walk I spoke of at one point in our housing was suspended with vertical members, something on the order of a suspension bridge, supported in the same way. The swinging of that arm is released by a trigger mechanism so that the arm swings back under the housing carrying the rabbit with it. That disappearance of the rabbit would not be possible if you had a wheel on the end of the arm that ran along the track, because you would have to provide a large opening for it to get there. The tracks are all about the same. You wouldn't have room to get the rabbit back into that trench and disappear if you had a wheel under it. It would be a hard thing to get it through there. You would have to rebuild that housing. It couldn't be done with the housing the way we have it built out at the Magic City track.

Recross-examination:

I don't know how you would take the housing as we have it here and operate it as we have here in that housing on the inside with a wheel on it. Off-hand I don't know just what that 1,379,224 patent is. I would have to see it. You couldn't escape that Smith rabbit in our housing and it might be possible to operate that if you ran that wheel on a two by four that was put on the ground, or a four-inch board, whatever you got, but if you did the first time the dogs would hit that smooth surface board they would pull their nails out and wouldn't be able to do much running.

MR. THOMAS A. KEEN, recalled by the plaintiff in rebuttal, testified as follows:

Direct examination:

I am the same Thomas A. Keen who was sworn and testified yesterday and qualified as an expert builder of dog racing tracks.

The reason that the patent to J. A. Pinard of May 3, 1887, would be impractical for dog racing is in the first place they had the course all studded with little pegs, and this apparatus is supposed to strike these pegs and bounce around from one to another to give the machine the life-like motion. If a dog is trying to follow an appartus like that no doubt would break their legs or something else would hap- [fol. 152] pen to them, and I doubt whether they could ever keep that machine on the ground. That patent is not practical for dog racing.

In the Wash patent, No. 611876, October 4, 1898, I don't believe they would be able to keep the conveyor on the track because there is an arm extending over a fence in a transversally direction; then there is a cable attached to the arm and then to a mat with a hare resting on that mat, and that is supposed to be drug over the ground. If that car was attaining any high speed at all the mat would be flying up in the air, and I don't believe they could keep the car on the track, and also create a lot of dust so the dogs couldn't see what they were chasing and I don't believe it would be practical for dog racing.

I don't believe the patent to P. Everett, No. 1052807 of February 11, 1913, is practical for dog racing on account of having a slot in the center of the track which would be similar to the old 1912 patent to Smith. As I stated before I believe the dogs would get their feet in the slot and cripple them. It would really be a cripp-ing device instead of a racing device.

Cross-examination:

The Pinard patent is impractical for the reason it had these studs projecting out all around the track. I don't know as it would make any difference as to the practicability of operating it if these studs were all in a straight line instead of being zigzag. I doubt if that apparatus would

work. I stated in my opinion it was impractical, the dogs would tear their feet up, crippling the dogs but I also stated I don't believe the device would work. The minute that device hit one of those studs it would fly up in the air. The dogs travel about thirty-eight miles an hour, somewhere in that neighborhood. That would be because the lure was on the ground and triking the studs and striking something on the surface of the ground. That would be true of anything that was on the ground with which the part carrying the lure contacted. If it was riding free in the air in some way that objection would not lie. I believe riding free in the air is different, I don't believe you would have any trouble with it. I refer to the part that pulls the rabbit in the Walsh patent as a cable, or could be a rope attached to the end of the arm, and then a mat that drags on the ground. I got that definition from looking at the drawing there. I read the specification of the Walsh patent quite some time ago. I don't know whether it calls for a cable or not. If the Walsh patent says there could be a rope rod or a pole I will still say the same, it would not be practical. It [fol. 153] wouldn't make any difference as long as the part that carries the rabbit runs along on the ground. I don't believe they could keep that conveyor and the car on the track with a thing of that kind because it would pull it off of the track. It has got to travel at too high a rate of speed. I mean the conveyor car there on the rail itself; it would derail that. It would bounce up and down and create a lot of dust. I don't think anything on the rod that extends out from the traction car that carries the rabbit that came in contact with the race track would raise the same amount of dust; that is a flat mat there. Anything that came in contact with the track would raise some dust, just a matter of degree of how much dust would be raised.

Redirect examination:

I have been connected with dog racing since 1910. I never saw or heard of any of these devices in operation. The average height of a greyhound is twenty-two inches. I have seen the Magic City Kennel Club Track in operation. I could see the greyhounds about half of the turns and on the back stretch all I could see was the upper portion of them; I would say about half of them anyway unless they

were way on to the outside. I was on the ground. I attribute this to the height of the housing above the track. I should judge the housing is somewhere between ten and fourteen inches above the track, it varies; the fill is right up to the slot, you have a little less height than if the fill of the track is not up to that bottom part of the slot you have got a little more housing. Most of the tracks slope toward the housing and the track itself on the turn is lower next to the housing than it would be on the outside; I don't know just what slope they have on the stretches but are bound to have slope on the turns, and a dog running close to the housing and hugging the rails naturally would be on the lowest part of the track.

Recross-examination:

I couldn't see the entire dog; I could see about half the height of the dog. I was standing I would judge about may be fifty feet away from the judge's stand, along about the center of the home stretch. I could see about half of the dog. You could distinguish the blankets on the dogs. It is hard to say how long the legs of an average greyhound are; I suppose the depth of their body must be about eleven inches; I suppose a dog would be in the neighborhood of about twelve to thirteen inches. Of course his hind legs are a little longer, but practically all the rear end of a dog is legs. The dog's legs would be at least twelve inches long, [fol. 154] right in that neighborhood. If the housing was ten inches above the track you could see part of the legs and all of the body, if the dog was standing still; if he is a small dog down around twenty-two inches you could see his body and if he was a big dog you could see more of it. You cannot see all of the dog at any position on the track when you are standing on the ground, but you can see the blanket. You can see enough to distinguish the dogs if you had field glasses on. I say the housing is somewhere between ten and fourteen inches high and a dog is about twenty-two; you are bound to see the difference in the two measurements.

Cross-examination:

The dogs wear color blankets and have numbers on them. You could see the numbers from where I stood, if one was

behind the other. I was standing on the ground. I couldn't say how high above the ground the lowest seat in the grand stand is. I wouldn't make a guess on the approximate height of the stand out there. I can tell you about the height we built our stand. It would be more than two feet. It seems to me they built it up eight or nine feet. If the dogs were away from the housing any distance on the track there is no question you could see the dogs from the stand. If the dog was close to the housing I don't suppose you could see the entire dog. You could see all but twelve inches standing on the ground, and the grand stand is eight or nine feet from where I was.

Redirect examination:

When a dog is running he is in an outstretched position, and I think that brings him closer to the ground than two feet.

Lodged on Feb. 7, 1929. H. P. Warfield, Clerk.

[File endorsement omitted.]

In United States District Court

Order Approving Statement of Evidence. Filed Feb. 25, 1929

The appellant herein, having lodged his statement of evidence with the clerk of this court and notified appellee thereof, in accordance with equity rule 75, and appellee having proposed certain amendments to appellant's said statement of evidence, and it appearing that appellee's proposed amendment is reasonable and should be allowed;

[fol. 155] It is hereby ordered:

That appellant's said statement of evidence as lodged be amended by substitution of pages filed herewith for correspondingly numbered pages of the statement of evidence as lodged by appellant; such substitution of pages being as follows:

New pages		for pages
12	for	12
14	for	14
15	for	15
18	for	18
19	for	19
35	for	35

On page 3, last line of first paragraph of the proposed statement of evidence, change the word "about" to "above."

As so amended and identifying physical exhibits introduced by the respective parties as follows:

Plaintiff's Physical Exhibits

No. 6, Affidavit by Thomas A. Keen.
No. 9, Charter of Mid-Continent Amusement Company.
No. 10, Articles of Incorporation of Mid-Continent Amusement Company.
No. 11, Certificate of Corporation Commission of Oklahoma.
No. 12, Certificate of Secretary of State of Oklahoma.

Defendants' Physical Exhibits

No. 1, Minutes of Mid-Continent Amusement Company.
No. 3, File wrapper and contents of Shaughnessy Patent No. 1,628,518.

the said statement of evidence is hereby approved as true, complete and properly prepared.

F. E. Kennamer, Judge United States District Court.

Tulsa, Oklahoma, February 25th, 1929.

[File endorsement omitted.]

[fol. 156] NOTE RE PLAINTIFF'S EXHIBIT No. 1

[CLERK'S NOTE.—Plaintiff's Exhibit No. 1—Copy of Letters of Administration is same as Exhibit No. 1 to Bill of Complaint appearing at page 13, and therefore omitted here.]

O. P. SMITH.

DOG RACING AMUSEMENT.

APPLICATION FILED SEPT. 4, 1919.

1,379,224.

Patented May 24, 1921.

3 SHEETS—SHEET 1.

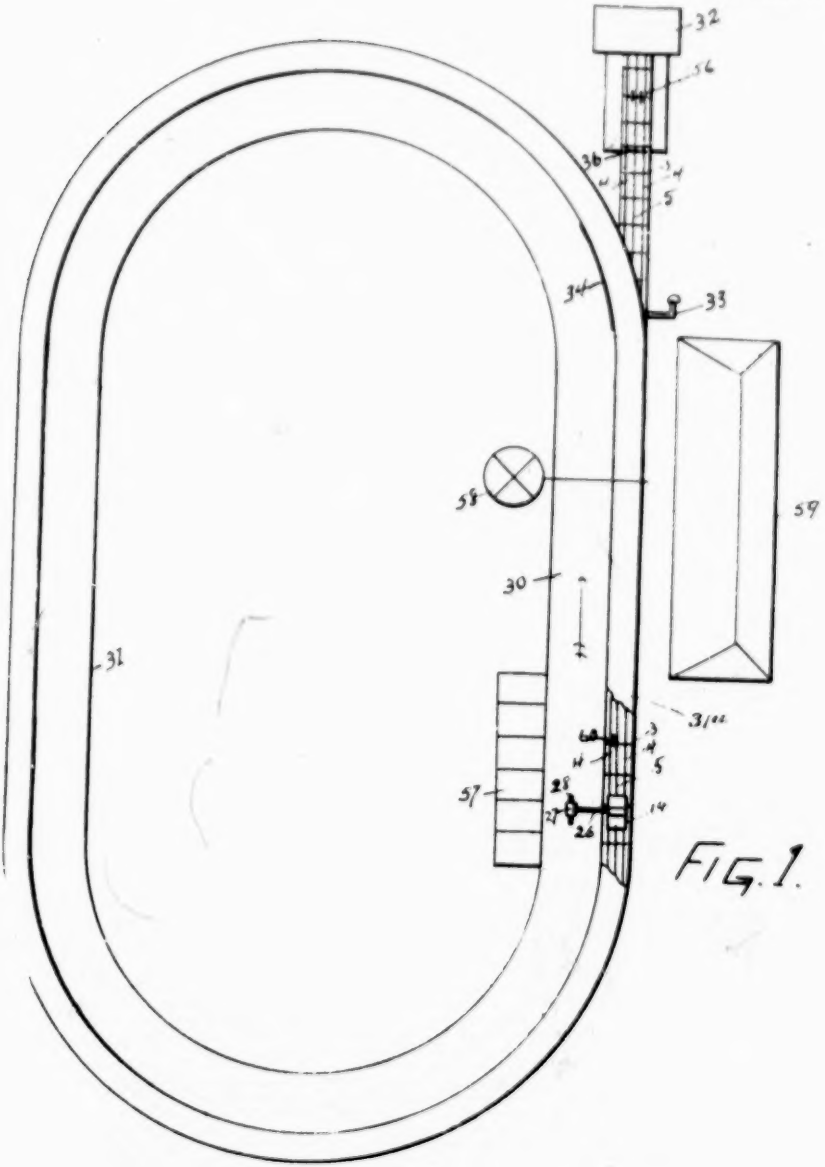


FIG. 1.

Witnesses:

Owen P. Smith

By Charles W. Brooks

his Attorney

159-160

O. P. SMITH.

DOG RACING AMUSEMENT.

APPLICATION FILED SEPT. 4, 1919.

1,379,224.

Patented May 24, 1921.

2 SHEETS—SHEET 2.

FIG. 2.

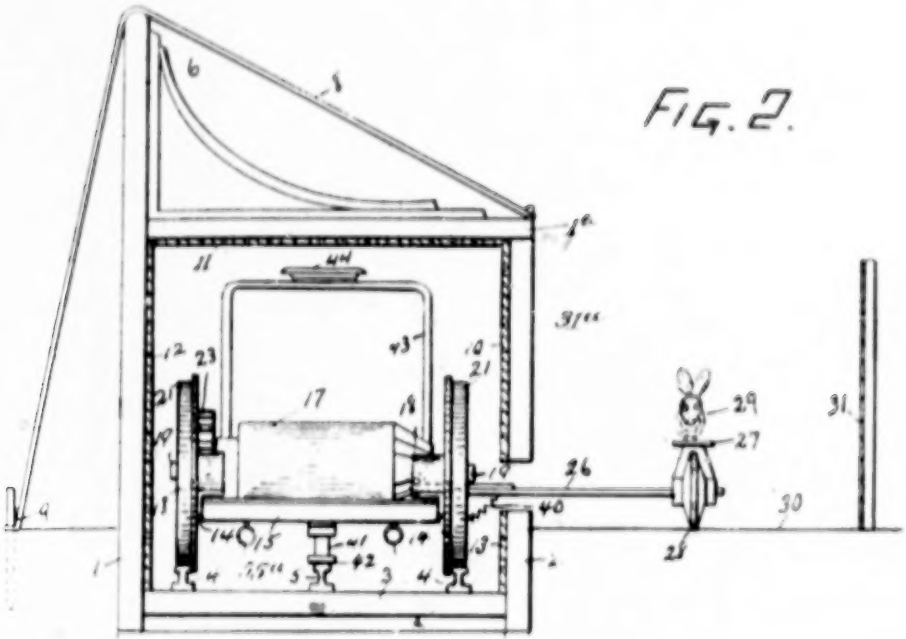
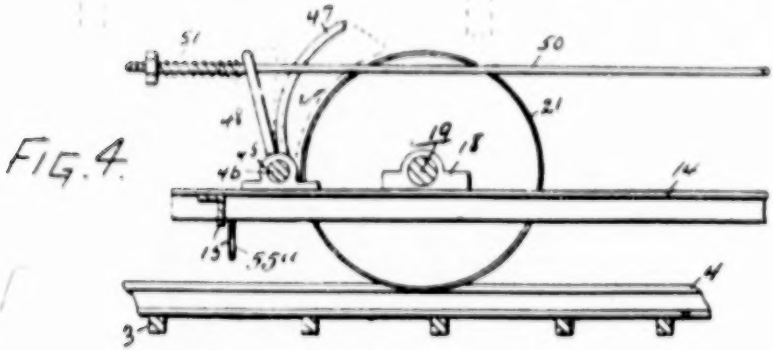


FIG. 4.



Owen P. Smith

By Charles W. Brown

Their Attorney

O. P. SMITH.

DOG RACING AMUSEMENT.

APPLICATION FILED SEPT. 4, 1919.

161-162

1,379,224.

Patented May 24, 1921.

3 SHEETS—SHEET 3.

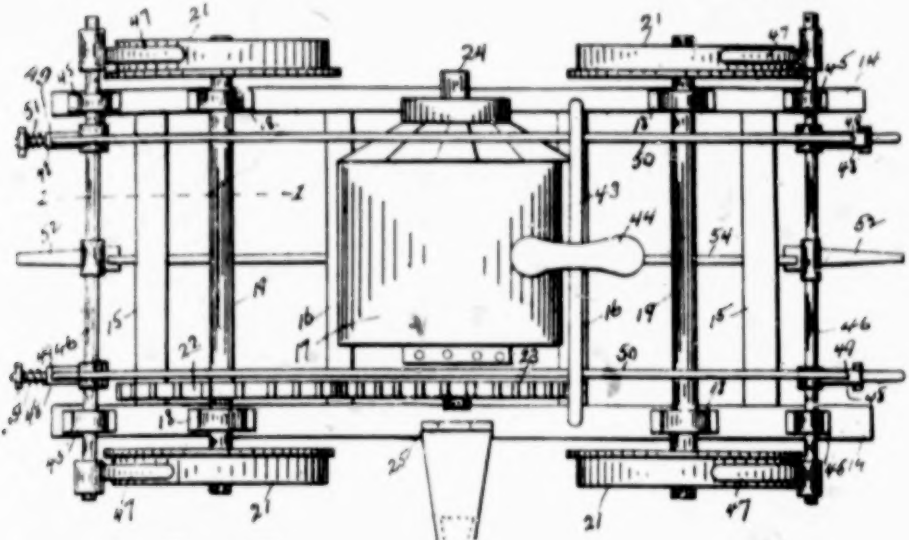
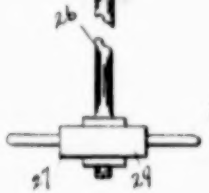


FIG. 3.



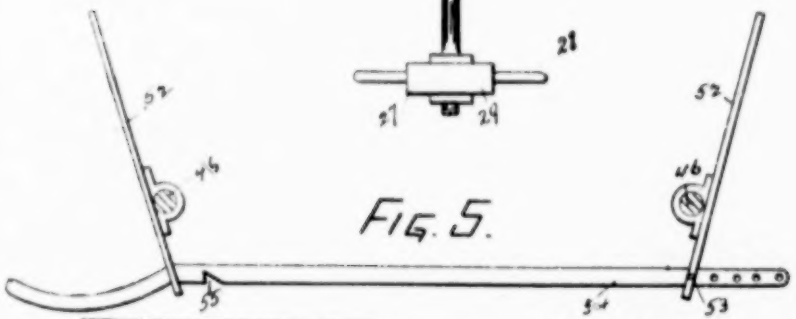


FIG. 5.

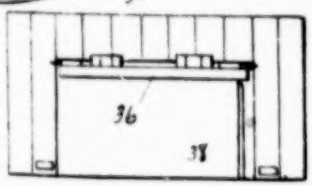


FIG. 6.

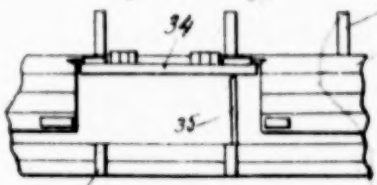


FIG. 7.

Owen P. Smith

By Chester W. Brown

His Attorney

[fol. 157] PLAINTIFF'S EXHIBIT No. 2

390

Department of Commerce, United States Patent Office

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the Specification and Drawings in the matter of the Letters Patent of Owen P. Smith, Number 1,379,224, Granted May 24, 1921, for Improvement in Dog-Racing Amusements.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this eighteenth day of November in the year of our Lord, one thousand nine hundred and twenty-seven and of the Independence of the United States of America the one hundred and fifty-second.

Thomas E. Robertson, Commissioner of Patents.
Attest: D. E. Wilson, Chief of Division. (Seal.)

(Here follow drawings, side folios 158, 159-160 and 161-162)

[fol. 163] United States Patent Office

Owen P. Smith, of Chicago, Illinois

Dog-racing Amusement

1,379,224. Specification of Letters Patent. Patented May 24, 1921

Application filed September 4, 1919. Serial No. 321,612

To all whom it may concern:

Be it known that I, Owen P. Smith, a citizen of the United States, residing at the city of Chicago, in the county of Cook and State of Illinois, have invented certain new and useful Improvements in Dog-Racing Amusements, of which the following is a specification.

My invention relates to amusements in which dogs are induced to race about a track by means of a lure or object conveyed mechanically in advance of them.

The object of my present invention is to provide a suitable track, an electric conveyer operated thereon, and a lure or bait to attract the dogs to race thereafter.

Other objects reside in the mechanical construction of the housing for the track and conveyer, the braking mechanism for stopping the said conveyer, the means for mounting and carrying the lure, and the means for concealing the lure within its den at the end of the race.

With the foregoing, and other objects in view, the invention consists of the arrangement and combination of parts as hereinafter described and claimed, and while the invention is not restricted to the exact details of the construction disclosed herein, yet, for the purpose of illustrating a particular embodiment thereof, reference is had to the accompanying drawings, in which like reference characters designate the same parts in the several views, and in which:

Figure 1 is a plan view of a track for dog racing, with my conveyer installed thereabout.

Fig. 2 is a section view of the housing for the track conveyer, etc., showing forward end view of conveyer, brakes removed.

Fig. 3 is a top plan view of the conveyer.

Fig. 4 is a section view of the conveyer taken along the line 1—1 of Fig. 3, showing the brake equipment.

Fig. 5 is a detail of the brake releasing mechanism.

Fig. 6 is a detail of the door to the den.

Fig. 7 is a detail of the door to the conveyer housing.

In the construction of my dog racing amusement, I provide a race track for the dogs, as 30, which may be circular, oval, kite-shaped, or any similar shape, and may be of such size as shall be best suited to the space available, and the purpose in view. This race track is fenced on one side by the low fence 31, and on the other side is enclosed by the housing 31' of the conveyor track, which surrounds said dog race track on the outer side. At some suitable location adjacent to the said track I have installed a raised platform or tower, as 32 within which are installed suitable electric switches, speed controllers, and such other electric mechanism as shall be best suited to control the operation of the conveyer as hereinafter described.

The housing for my conveyer track is constructed with the frame work of posts 1 and 2 arranged around the dis-

tance of the track in pairs, and at suitable distances apart. These posts are set in the ground as shown, and the posts 2 extend but a short distance above the surface of the ground, while the posts 1 extend above the top of the housing. The pairs of posts 1 and 2 are suitably connected together by the cross pieces 3, forming ties for supporting the rails for the conveyer track—4—4, and also for the third rail 5 which carries the electric current for operating the conveyer car hereinafter described. For the purpose of supporting the roof 1^a of the housing, and the overhanging side toward the track, I have provided the brackets 6 mounted upon the inner sides of the posts 1 as shown, and I have also provided a truss rod 8 which is attached to the roof 1^a passes over the top of the post 1, and is suitably anchored in the ground outside of the housing as at 9.

I have provided boards running lengthwise of the said course for lining said housing, as 12 fastened to the posts 1, 11 attached to the roof 1^a, 10 suspended from the ends of the roof 1^a, and 13 secured to the posts 2, these forming a complete inclosure of the said conveyer track and conveyer, with the exception of the space between the boards 10 and 13, where is provided an opening extending the entire circumference of the course for the purpose hereinafter explained.

Mounted to run upon the rails 4, 4 within the housing, I have provided an electric conveyer car, consisting of a frame of side bars 14, connected together by means of the cross bars 15 at their ends, and the additional cross bars 16 near the middle. Upon the cross bars 16 I have mounted a suitable electric motor 17 for propelling said conveyer car. Secured at suitable locations upon the side bars 14 I have provided the bearings 18 within which are journaled the [fol. 164] axles 19 carrying at the outer ends thereof, the car wheels 21 rigidly attached thereon, and designed to run upon the rails of the track 4, 4. Mounted rigidly upon the axle at the front I have also provided a gear wheel as 22 in mesh with a corresponding gear wheel 23 mounted upon the shaft 24 of the motor 17, and designed to impart motion from the motor to the car wheels. At 25 on the side of said car toward the dog race course, I have hinge-mounted the arm 26 extending through the opening between the side boards 10 and 13 of the housing, and out toward the middle of the dog race

course. Near the outer end of said arm I have mounted a wheel 28, preferably with rubber tire to rotate on the ground, and support the end of said arm 26. Above said wheel I have provided a platform 27 for mounting upon it the lure 29 in shape of a stuffed rabbit or other suitable object to entice the dogs to chase it. At the point 40 I have connected to said arm 26 a spring, extending to and attached to the frame as shown, designed to hold the said arm, and the wheel at the end of said arm down with the wheel in contact with the ground. At 41 on the frame of said car I have provided a bracket extending downward, and carrying at its lower end the contact shoe 42 in contact with the third rail 5, said shoe being connected by suitable wiring with the electric motor 17 for conveying the current received from the third rail to said motor.

At 43 I have provided a bracket extending upward from the frame of said conveyer car, and carrying at its upper extremity one or more shoes 44 for contact with the roof boards 11 of the housing, in case the car conveyer should jump off the rails, or for any reason should raise above said rails. Normally said shoes are out of engagement with the roof boards 11.

At 45 on the side bars of said conveyer car I have provided bearings for the brake rod shafts 46. Said brake rod shafts carry the brake shoes 47 positioned in proximity to the car wheels 21 and designed to engage said car wheels when required to brake the speed of said car, and to stop the same at the end of the run. Extending upwardly from said brake rod shaft I have provided the arms 48 having holes 49 bored near their extremity, through which passes the rod 50, threaded at its outer ends, and with nuts thereon, and a compression spring 51 for operating said brakes. The tension of said spring 51 may be increased or diminished by adjusting the nuts as desired.

Midway the length of said brake rod shafts I have provided another arm 52, extending both above and below said brake rod shaft. At the lower end of the arm 52 attached to the forward brake rod shaft, I have provided a rectangular opening, and a hole suitable for receiving a pin as 53 to hold the brake operating and releasing bar 54. At the rear the arm 52 is also provided with a rectangular opening at its lower end for receiving said brake releasing bar 54. Said

brake releasing bar is constructed with several holes at its forward end for suitable adjustment by the pin 53, and at its rear end it is provided with a notch 55 for engaging the arm 52 at the rear, and when so engaged, holding the brake shoes 47 out of engagement with the car wheels. At a suitable point 60 in the course of the track, a trip is provided for engaging the rear curved end of the brake releasing bar 54, and disengaging it from the arm 52 at the rear of said car, permitting the spring 51 to press the shoes 47 into engagement with the car wheels, and by the friction reduce the speed of said car, and bring it to a stop after the electric power is shut off. The curved terminal portion of the bar 54 extends below the rest of the bracket mechanism and into the path of the projecting trip 60 so as to be engaged and lifted by the same. The curved terminal portion of the bar 54 presents a lower convex face to the trip and is lifted by the same sufficiently to cause the bar 54 to release the member 52 and permit the brake mechanism to operate. I have also provided rings as 55ª on the lower side of the frame of said car, designed to engage hooks mounted in the track at 56 for stopping said car at said point and holding it against forward movement in case the brakes shall for any reason be insufficient to bring the car to a stand still.

At 33 in the course of my track, I have provided a switch, with a track extending to the den or inclosure where the lure is to be concealed after the race. On the side of the housing toward the track at the point 33 I have provided a side door, mounted upon hinges as shown at 34. During the race said door 34 is held open by means of the catch 35, but as the race is completed, and the car conveyer passes over the switch in entering the den, it trips the said catch, and closes said door against the admission of the dogs. I have also provided a second door, as 36 at the entrance to the den, which is likewise held open during the race by the catch 37. As the car and lure pass through said door into the den, the catch is released by the trip 38 as shown.

At a suitable point, as 57, a cage is provided for retaining the dogs until the race is ready to be run. At 58 a judge's stand is provided, and in front of said judge's stand is provided a wire as usually employed on race courses for determining the winner. A grand stand may be provided as at 59 for accommodation of the audience.

In the operation of my said device, the conveyer car with [fols. 165 & 166] the lure is backed out upon the track across the switch 33 and the car is started slowly around the course in the direction indicated by the arrow. The dogs are retained within the cage until the lure passes opposite said cage, and at pre-determined time the barrier retaining said dogs is raised, and the dogs are simultaneously released, to pursue said lure. The lure is then carried around the track by the electric conveyer car, (or may be carried twice or more around in smaller tracks) and usually as the lure comes down the home stretch, the power is cut off, and the car permitted to run by its own momentum, with the dogs chasing. As the dogs pass under the wire, the judges decide which are the winners. When the race is finished by passing once or more around the course, the switch 33 is thrown to sidetrack the conveyer car onto the track leading to the den, and the lure is carried through the trap doors 34 and 36, which are closed behind the conveyer car and the lure, and thus conceal the lure from the dogs and prevent their further pursuit thereof. As the car passes the trip 60, the brake mechanism is released, and the brakes are applied to the car wheels, to bring said car to a stop within the den. In case the car does not stop before reaching the hooks 56, the rings depending from the lower side of the frame engage with said hooks and thus bring the car to a full stop.

Having thus described my invention, what I claim and desire to secure by Letters Patent, is the following:

1. In a dog racing amusement, a race course suited for dogs, a casing extending around the outer side of the race course and provided with a longitudinal opening, a mechanical conveyer including a track extending around the race course and located within the casing, and a conveyer car mechanically operated upon said track and provided with an arm extending through the longitudinal opening of the casing in a projecting position over the track and adapted to carry a lure, and a wheel rotatably mounted on and supporting the arm at the projecting end thereof.

2. In an amusement, the combination of a race course suited for dogs, a covered rail track adjacent said course on one side, a conveyer car mechanically operated upon said track, a horizontally extending arm hinged to said car ex-

tending midway of said course, a wheel rotatably mounted near the end of said arm, and resting upon the ground, a platform supported by said arm and a lure or quarry mounted upon said platform for attracting the dogs.

3. In a dog racing amusement, the combination of a race course suited for dogs, a housing adjacent said course on one side having an opening in the side toward the course, a rail track within said housing, an electrically operated car within said housing for operation upon said rail track, an electric conductor within said housing, a shoe carried by the car for contact with said conductor, friction brakes adjacent the wheels of said car, means for holding said brakes out of contact with said wheels, means on the track for releasing said brakes, a hinged arm extending horizontally from said car through the opening in the side of the housing, a wheel mounted upon said arm for rotation upon the ground, a platform also mounted upon said wheel and a lure mounted upon said platform.

4. In a dog racing amusement, a race course suitable for dogs to race upon, a covered two rail track along one side of said course having a lateral opening on the side toward said course, a mechanically operated car for operation upon said track, an arm carried by said car extending through said opening, a wheel support for said arm resting upon said course, a decoy or lure mounted upon said arm, a spring for holding said wheel in contact with the ground, brake mechanism adjacent the wheels of the car, a trip along said track for releasing said brakes, springs for applying said brakes to said car wheels, when so released, a shoe carried by the car in proximity to the roof of said covering, for engagement with said roof whenever the car rises off the track rails, rings depending from the car and hooks at the end of the spur track for engaging the rings and stopping the car.

In testimony whereof, I have hereunto set my name in the presence — a witness.

Owen P. Smith.

Witness: M. J. Paddon.

[fol. 167] PLAINTIFF'S EXHIBIT No. 3

390

Department of Commerce, United States Patent Office

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the Specification and Drawing in the matter of the Letters Patent of Owen P. Smith, Number 1,507,440, Granted September 2, 1924, for Improvement in Housings for Conveyor Cars and Tracks.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this eighteenth day of November in the year of our Lord, one thousand nine hundred and twenty-seven and of the Independence of the United States of America the one hundred and fifty-second.

Thomas E. Robertson, Commissioner of Patents.
Attest: D. E. Wilson, Chief of Division. (Seal.)

(Here follows drawing, side folio 168)

[fol. 169] Patented Sept. 2, 1924. 1,507,440

United States Patent Office

Owen P. Smith, of Chicago, Illinois

Housing for Conveyer Cars and Tracks

Application Filed May 24, 1921. Serial No. 472,812

To all whom it may concern:

Be it known that I, Owen P. Smith, a citizen of the United States, residing at the city of Chicago, in the county of Cook and State of Illinois, have invented certain new and useful Improvements in Housings for Conveyer Cars and Tracks, of which the following is a specification.

My invention relates to means for concealing the track and conveyer car in a mechanical lure conveyer for dog racing courses.

168

Sept. 2, 1924. 1,507,440

O. P. SMITH

HOUSING FOR CONVEYER CARS AND TRACKS

Filed May 24, 1921

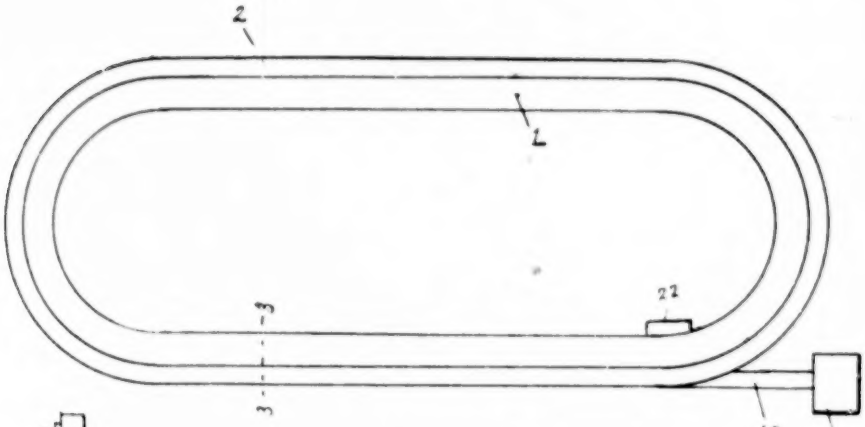


FIG. 1

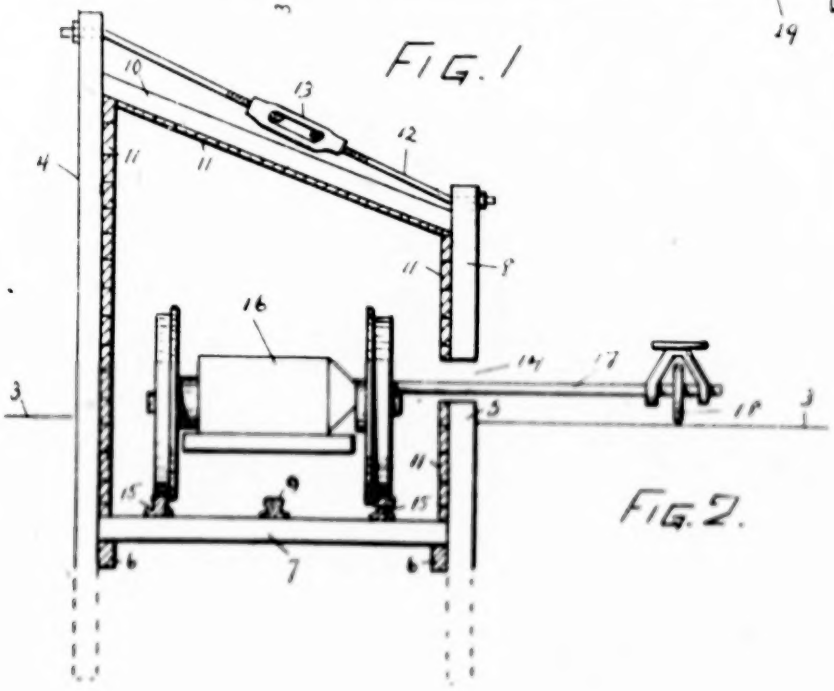


FIG. 2.

Owen P. Smith
by Chester U. Brown
his Attorney

The object of the present invention is to provide a suitable housing for concealing the track and conveyer car from the dogs, and which shall form a continuous housing around the race course, with a continuous opening upon the side toward the course.

Another object is to provide suitable means for supporting the side of the housing toward the track above the opening in said housing.

With the foregoing, and other objects in view, my invention consists of the arrangement and combination of parts as hereinafter described and claimed; and while the invention is not restricted to the exact details of the construction disclosed herein, yet, for the purposes of illustrating a particular embodiment thereof, reference is had to the accompanying drawings in which like reference characters designate the same parts in the several views, and in which,

Figure 1 is a plan view of a dog racing course having my improved housing arranged thereabout.

Figure 2 is a sectional view of the housing taken along the line 3—3 in Figure 1.

In the accompanying drawings 1 represents a race cource suitable for dogs to race upon, having my improved housing 2 installed around the outer circumference thereof. At 19 I have provided a siding and switch suitable for switching the car upon the side track and to the tower and den thereunder 20.

In the installation of my said housing, there is preferably made a slight excavation below the ground line 3. Posts as 4 and 5 are set into the ground at suitable distances apart around the entire course, and these are connected together by the cross ties 7, 7, and the timbers 6, 6. The posts 5, 5 extend slightly above the ground line, while the posts 4, 4 extend above the topmost part of the housing. Rails to form a track as 15, 15 are laid upon the cross ties, and a suitable conductor as 9 also provided for the car. To form the frame work of the inner side and roof, I employ the timbers 8 and 10 respectively, and excepting for a continuous opening 14 on the side toward the race course, the entire interior of the frame work is lined with boards as 11. For supporting the inner edge of the roof, and the inner side of the housing above the opening 14, I have provided truss rods as 12, having one end attached to the upper portion

of the posts 4 above the roof, and the other end attached to the upper portion of the timbers 8, with a turnbuckle in between said ends to provide means for adjustment to keep the roof always at the desired elevation.

At 16 I have shown a conveyer car upon said rail track, with an arm 17 extending outwardly toward the middle of the race course, with a traction wheel 18 at the end thereof resting upon the ground. At 22 I have provided the door shown in the side of the housing, which is provided with any suitable catch and release (not shown) for holding said door open during the race, and closing it when the car has passed through it going upon the side track to the den.

In the foregoing construction, it will be seen that the entire track, and conveyer car are concealed from the dogs, the only portions being exposed to view are the arm and parts mounted thereon. When the race is finished, the car is switched upon the siding, and passes through the door 22, which is closed to conceal the entire equipment.

Having thus described my invention, what I claim and desire to secure by Letters Patent, is the following:—

1. In a housing for covering tracks and cars having laterally extending arm operated upon said track, the combination of posts set in the ground at the sides of said track, timbers attached to said posts to form a frame, and boards attached to said timbers and posts to form a continuous enclosure above said track, and having a continuous opening in one side of said housing adapted to permit extension of the laterally extending arm, therethrough, and truss rods attached to the closed side of the housing adapted to support the side of said housing above the said continuous opening.

2. In a continuous housing for concealing a rail track and conveyer car having a laterally extending arm, posts on [fol. 170] either side of the track, timbers attached to the upper and lower ends of the posts to form a frame, the upper timbers being inclined upwardly, adjustable stay rods connecting the upper ends of the posts to support the inner side wall of the frame, boards attached to the frame to form a covering, one side of the covering having a continuous opening therein through which the arm extends.

3. In a continuous housing for concealing a rail track and conveyer car having a laterally extending arm, base

timbers below the ground surface, having rails thereon, posts on each side of the rails, connected to the base timbers and extending upwardly therefrom, the inner post being of less height than the outer post, inclined timbers connecting upper ends of the post, and screw threaded adjustable stay-rods secured to the upper end of the outer post and supporting the inner post therefrom.

In testimony whereof, I have hereunto set my hand in the presence of two subscribing witnesses.

Owen P. Smith.

In presence of Chester W. Brown, Richard Green.

[fol. 171] PLAINTIFF'S EXHIBIT No. 4

390

Department of Commerce, United States Patent Office

To all person to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the Letters Patent of Owen P. Smith, Number 1,630,812, Granted May 31, 1927, for Improvement in Traction Cars and the Like.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-fourth day of June in the year of our Lord, one thousand nine hundred and twenty-seven and of the Independence of the United States of America the one hundred and fifty-first.

Thomas E. Robertson, Commissioner of Patents.

Attest: D. E. Wilson, Chief of Division. (Seal.)

[fol. 172] No. —. (Picture of Building) 1,630,812

The United States of America to all to whom these presents shall come:

Whereas Owen P. Smith, of Miami, Florida, presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful im-

provement in Traction Cars and the Like, a description of which invention is contained in the specification of which a copy is hereunto annexed and made a part hereof, and complied with the various requirements of law in such cases made and provided, and

Whereas upon due examination made the said claimant is adjudged to be justly entitled to a patent under the law.

Now, therefore, these Letters Patent are to grant unto the said Owen P. Smith, his heirs, or assigns, for the term of seventeen years from the date of this grant, the exclusive right to make, use and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this thirty-first day of May, in the year of our Lord one thousand nine hundred and twenty-seven, and of the Independence of the United States of America the one hundred and fifty-first.

Thomas E. Robertson, Commissioner of Patents.

Attest: G. P. Tucker, Law Examiner. (Seal.)

(Here follows drawing, side folios 173 & 174.)

[fol. 175] Patented May 31, 1927. 1,630,812

United States Patent Office

Owen P. Smith, of Miami, Florida

Traction Car and the Like

Application filed May 24, 1926. Serial No. 111,153

The present invention is a continuation in part of my application Serial No. 595,045, filed October 17, 1922, now Patent No. 1,591,569.

This invention relates to cars for operation upon rail tracks, and especially to the class of cars mounted upon four flanged wheels, or trucks having four flanged wheels each,

173-174

May 31, 1927. 1,630,812

O. P. SMITH

TRACTION CAR AND THE LIKE

Filed May 24, 1926

FIG. 1.

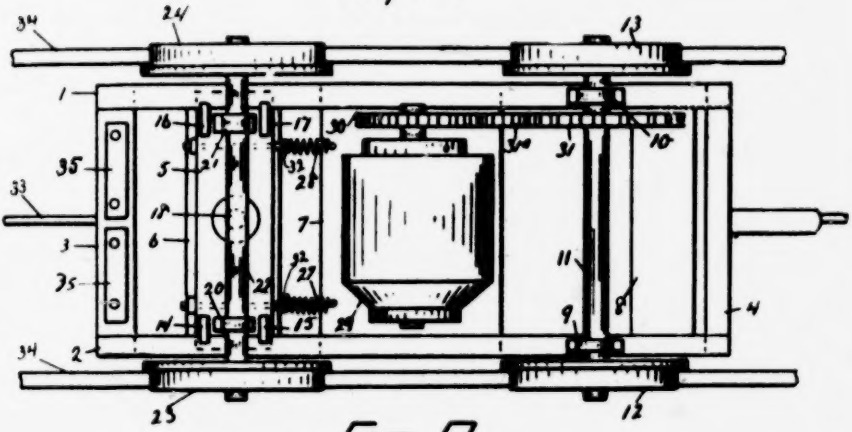
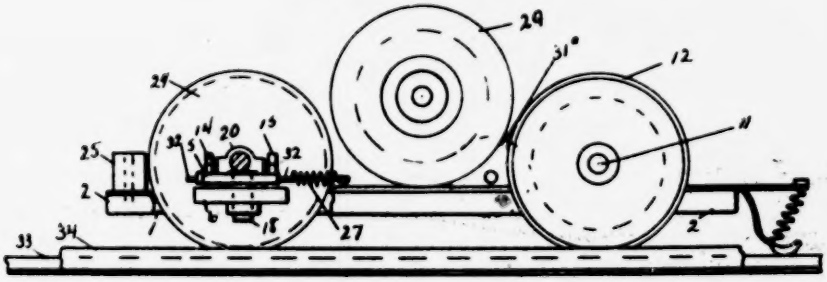


FIG. 2.



Owen P. Smith
By Chester W Brown
his Attorney

to be operated upon tracks having sharp turns which the car is required to make at very high speed.

The object of my present invention is to provide such a car wherein the wheels will automatically follow the curve of the track and thus avoid danger of jumping from the track and injuring the car and causing damage to nearby property.

Another object is to provide such a car, which can be operated from a distance, and without any person aboard the car to steer or guide it on the curves, and which will uniformly and automatically negotiate the curves without jumping the track, no matter how high a speed the car may attain in such curves.

With the above, and other objects in view, which will more particularly appear in the following description, I have shown in the accompanying illustrations one embodiment of my said invention, as applied to electric cars for use on dog racing tracks as patented by me.

In the accompanying drawings, in which like numerals of reference refer to similar parts throughout the various views,

Figure 1 is a top plan view of an electric car showing my construction.

Figure 2 is a side elevation, showing the forward part of the car, with parts removed to show operating parts.

In the construction generally of cars for operation upon rail tracks, it has been customary to mount the cars upon either four flanged wheels, in the case of small cars, or in case of larger cars, upon two trucks of four wheels each. Generally the said wheels are fixedly attached to an axle, and said axle is mounted to rotate in bearings rigidly attached to the frame. This construction holds the forward and rear wheels rigidly in line, whether traveling on a straight track, or around curves, and as a consequence, whenever the car turns a curve, the wheels on one side must slide against the outer rail to adapt the direction to the direction of the curve. While such cars operate quite satisfactorily on straight tracks and around large curves at slow speed, yet whenever attempt is made to operate them around a sharp turn at a high speed, they are very likely to jump the track, and even if they do not jump

the track, the wear on the flanges of the wheels, and on the outer rail becomes excessive.

The cars which I have illustrated herein, are adapted for use in my dog racing amusement, as patented in former patents to me, and are adapted to operate at high speed around a small track, with sharp turns, and to be operated from the control tower at some distance from the track, and in practice I have found them very safe and efficient.

In the construction of the car illustrated in the accompanying drawings, I have preferably constructed a rectangular frame of angle irons as 1 and 2 for the sides, and 3 and 4 for the ends, these parts being securely attached together at the corners with rivets, or welding, as preferred. To support the working parts of said car, and strengthen said frame, I have provided cross members, as 6, 7 and 8, all of which are attached to the side pieces as shown. Near the rear of the frame, as at 9 and 10, I have provided suitable bearings for the axle 11, which is rotatably mounted in said bearings. At the ends of this axle 11 I have fixedly attached the two flanged wheels 12 and 13.

Near the forward part of my frame, I have provided the pivotally mounted cross bar 5, which is mounted at its mid-center upon a bolt, pin or king-bolt 18 passing through the mid-center of said cross-bar, and through an opening provided in the cross piece 6 of the frame. At the extremities of the cross-bar 5 I have provided suitable guides, as 14, 15, 16, 17 which are attached to the upper side of said cross bar and then extend upward, and again horizontally to engage the upper edge of the angle irons 1 and 2 forming the side frame of the car, the object of said guides, being to retain the cross-bar 5 in substantially horizontal position while in operation.

An axle 22 is rotatably mounted in two bearings 20 and 21 fixedly attached to said cross-bar 5, and on the extremities of said axle are fixedly mounted the two traction flanged wheels 23 and 24. At 27 and 28 I have shown two tension springs which are located one upon either side of the center or king-bolt attaching the cross-bar to the frame, the other end of each spring being suitably attached to the [fol. 176] cross-piece 7 at suitable points for the purpose. I have preferably attached said springs to the cross-bar 5 by means of screw-eyes 32, 32, with nuts upon the op-

posite side of said cross-bar, thus affording means of increasing or reducing the tension of one or both of said springs, when desired. At 29 I have mounted a suitable electric motor upon said frame, for operation of said car through current supplied thereto by a third rail 33, or other suitable means. A gear wheel 30 upon the shaft of said motor is in mesh with an idle gear wheel 31a mounted upon the frame, which in turn is in mesh with the gear 31 mounted upon the rear axle 11, and in consequence, whenever the electric motor is rotated in operation the gearing rotates the rear axle, and the rear wheels propel the car along the track 34 and in the usual way.

In the foregoing construction, as will be seen, I have provided front wheels which are mounted to turn sideways, when negotiating a curve, the same as the front wheels of a buggy or automobile are turned in negotiating a curve. By this construction, the wheels can readily adapt themselves to the direction of the curve, and follow the rails around the curve without the usual risk of jumping the track, as when the front and rear wheels are held rigidly in alignment. As my cars are too small to carry an operator to turn the front wheels when approaching the curves, I have provided the means shown consisting of the swiveled front axle, and the tension springs connected from said swiveled axle to the frame. The springs are preferably adjusted by means of the screw-eyes and nuts to such tension as shall be best suited to the purpose for which the car is employed. In straight tracks, or those having slight curves, the tension of the two springs should be slight and equal. On tracks where the car is continually describing a small circle at high speed, as in the dog racing track, the tension of the spring on the outer side should be much less than the one on the inner side, thereby permitting the wheels to turn in the direction of the curve at very slight pressure upon the flange of the outer wheel. While I have shown tension springs in use, yet it is apparent that any equivalent means may be employed to accomplish this result, without departing from the spirit of the invention.

While I have shown the front wheel only as swiveled, it is apparent that the rear wheels may also be swiveled, or the rear wheels only swiveled, or that the wheels on one side may be mounted to turn on a pivot, and the wheels on

the other side mounted rigidly. I usually employ weights, of suitable size as 35, 35 mounted upon the forward part of the car to assist in holding the car upon the track.

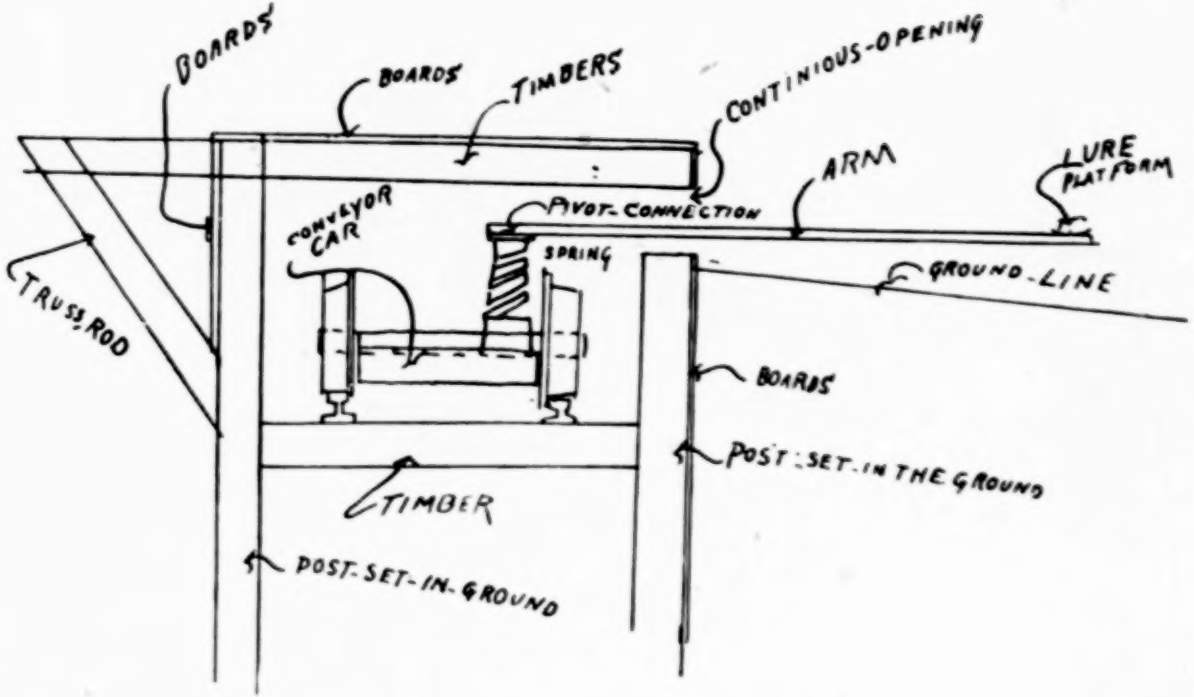
Having thus described my invention, what I claim and desire to secure by Letters Patent, is the following:

1. In a traction car of the class described, the combination with a frame, of a motive power mounted upon said frame, traction wheels mounted upon an axle rotating in bearings rigidly attached to said frame, wheels mounted upon a second axle rotating in bearings mounted upon a support adapted to rotate pivotally about its mid-center, guides on said support and engaging the frame to hold said support in horizontal position and springs connected between said support and the frame adapted to hold said wheels normally in alignment with the aforementioned wheels.

2. In a device of the class described, the combination with a motor driven car, of an axle rotatably mounted in bearings rigidly attached to said car, wheels fixedly mounted upon said axle, a second axle rotatably mounted in bearings attached to a cross-bar pivoted at its mid-center to the frame and adapted to turn to right or left, bolts extending through said cross-bar and being provided with adjusting means and springs connected from said bolts to the frame on either side of its center adapted to hold said cross bar normally at right angles to the direction of travel of the car.

3. In a device of the character described, a frame comprising side and end members, an axle journalled in bearings carried by the frame and having wheels thereon, cross members extending transversely of the frame to form supports, a cross bar pivotally supported by one of the cross members for swinging movement in a horizontal plane, an axle carrying wheels journalled in supports on said pivotal cross bar, guides on said cross bar and extending upwardly and outward to engage the side frame, thereby holding the cross bar in horizontal position, bolts passing transversely through the cross bar on both sides of the pivotal connection between the cross bar and cross member and springs connecting the said bolts with a second cross member to hold said cross bar and the axle carried thereby nor-

CROSS SECTION. HOUSING - WITH - CONVEYOR - USED AT MAGIC - CITY. KENNEL - CLUB -



Plaintiff's Exhibit No. 5.

177-178

Plaintiff's Exhibit No. 7.

183-184

525538

(EX'R'S BOOK) 135 – 195

DIV. 7

PATENT No. 1481313

JAN 22 1924

Name William C. Creveling

Assignor of 1/3 to William W. Tigar of San Diego, Calif., and 1/3 to John D. Talbot, of Denver, Colo. and 1/3 to Agnes Creveling, of Los Angeles, Calif.

of Los Angeles

County of

State of California

Invention Animal Racing Track

Filed

PARTS OF APPLICATION FILED

	ORIGINAL	RENEWED
Petition	Dec 29, 192	, 192
Affidavit	" " , 192	, 192
Specification	" " , 192	, 192
Drawing	Sheets 6 , 192	, 192
Photo Copy	, 192	, 192
First Fee	$15 Dec 29, 1921	, 192
Appl. filed complete	Dec 29, 192	, 192

Examined and Passed for Issue June 20 1923

Exr. Dir. 7

Notice of Allowance June 22, 192 3 By Commissioner

Final Fee $20 Dec 22, 192 3

JAN 22 1924

Patented , 192

Attorney ~~Hazard & Miller, 500 Central Bldg. Los Angeles, Cal.~~

Associate Attorney Wiedersheim & Siebanecks, 1332 Chestnut St. Philadelphia, Pa

Division of App. No. 2

(No. of Claims Allowed 9) Print Claim 1

in O. G. 346-73

Title as Allowed Animal Racing Track

mally at right angles to the direction of travel of the car, and means for propelling the car carried by the said last mentioned cross member.

In testimony whereof, I have duly signed the foregoing specification.

Owen P. Smith.

(Here follow drawings, side folios 177-178 and 179-180)

[fols. 181 & 182] PLAINTIFF'S EXHIBIT No. 8

390

Department of Commerce, United States Patent Office

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents in the matter of the Letters Patent of William C. Creveling, Assignor of One-Third to William W. Finn, One-third to John A. Talbott and One-sixth to Agnes Creveling, Number 1,481,313, Granted January 22, 1924, for Improvement in Animal Racing Tracks.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this fourth day of October, in the year of our Lord, one thousand nine hundred and twenty-seven and of the Independence of the United States of America the one hundred and fifty-second.

Thomas E. Robertson, Commissioner of Patents.

Attest: D. E. Wilson, Chief of Division. (Seal.)

(Here follows file-wrapper, patent No. 1,481,313, side folios 183-184)

[fol. 185] 15, Rec'd Dec. 29, 1921. U. S. Pat. Office. 525,538

313

Petition and Power of Attorney

To the Commissioner of Patents:

Your Petitioner, William C. Creveling, citizen of the United States, a resident of Los Angeles, County of Los

Angeles, State of California, who e post office address is Westminster Hotel, 4th and Main Sts., Los Angeles, California, prays that letters patent may be granted to him for the improvement in animal racing tracks set forth in the annexed specification; and he hereby appoints the firm of Hazard & Miller, whose register number of 10478, composed

surviving member

of the [following member: Henry T. Hazard and]* Herman Miller, of 506 Central Building, Los Angeles, California, his attorneys with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent and to transact all business in the Patent Office connected therewith.

Signed at Los Angeles in the County of Los Angeles and State of California, this 19th day of December, 1921.

William C. Creveling.

(25-cent documentary stamp.)

FBC.

Specification

To all whom it may concern:

Be it known that I, William C. Creveling, a citizen of the United States, residing at Los Angeles, in the County of Los Angeles and State of California, have invented new and useful improvements in animal racing tracks, of which the following is a specification:

525,538 1.

[fol. 186]

My invention relates to animal racing apparatus of that character in which dogs or other like animals are induced to race about a track by means of a lure or object conveyed mechanically along the track. A purpose of my invention is the provision of a racing apparatus of the above described character including a lure conveying car which is moveable over a conveyor track arranged within the area defined by

[*Words and figures enclosed in brackets erased in copy.]

the race track to permit of the forming of endless race and conveyor track so that the animals can be induced to traverse the entire race track one or more times.

It is also a purpose of my invention to provide a racing apparatus in which the lure conveying car is so constructed as to insure of its easy and unrestricted movement over the conveyor track, and one which includes a lure sustaining arm and means co-operating therewith for automatically causing a retraction of the arm from the race track to effect a termination of a race.

I will describe one form of racing apparatus embodying my invention and will then point out the novel features thereof in claims.

In the accompanying drawings,

Figure 1 is a view showing in top plan a race track having applied thereto one form of racing apparatus embodying my invention.

Fig. 2 is an enlarged vertical sectional view taken on the line 2—2 of Fig. 1.

Fig. 3 is a top plan view of the lure conveying car comprised in the apparatus shown in the preceding views.

Fig. 4 is a fragmentary view partly in section showing the current collector and constituting a

[fol. 187]

part of the conveyor car shown in Fig. 3.

Fig. 5 is an enlarged transverse section taken approximately on the line 5—5 of Fig. 3.

Fig. 6 is an enlarged cross section taken on the line 6—6 of Fig. 3, and with dotted lines showing a tripping device for a movable part of the apparatus.

Fig. 7 is a view similar to Fig. 6. showing one form of trip embodying my invention in engag-

ing position with respect to the latch device.

Similar reference characters refer to similar parts in each of the several views.

Referring specifically to the drawings, my invention, in its present embodiment, comprises a race track R over which the animals are adapted to travel, this track, in the present instance, being of endless form as shown in Fig. 1 and encircled by a partition or fence F. At the inner side of and in a place below the track R, is a conveyor track C also endless and including track rails 15 over which a lure conveying car designated generally at K is adapted to travel. The conveyor track and car are concealed and protected from the elements by a housing Per B. H formed on its track side with a relatively narrow slot or passage 16 in which is adapted to travel arm A having a lure L supported thereon in the manner clearly shown in Fig. 2.

As illustrated to advantage in Fig. 3,

[fol. 188]

the conveyor car K includes a chassis 17 supported for movement over the rails by means of wheels 18 fixed to axles 19 and 20, the former axle constituting the front axle of the car and being swivelly sustained on the chassis to allow of the necessary movement of the front wheels when traversing

the endless curved portions of the track C. This swiveled front axle is yieldingly maintained in normal position by a suitable spring or springs, such as 19a, that are secured to a fixed portion of the chassis and bear on the rear side of said front axle at points to the sides of its axis of swinging movement. The axle 20 constitutes the rear and driving axle of the car and is adapted to be driven by an electric motor 21 through the medium of gears 22. Current is conveyed to the motor M by means of a current collector which, as clearly shown in Fig. 4, includes an arm 23 pivoted upon the chassis at the point indicated at 24 and carrying a shoe 25 normally urged into contact with the third rail 26 by means of a spring 27.

As shown in Fig. 5, a stationary disc 28 is fixedly secured upon a yoke 29 rising from the chassis 17 and suitably secured thereto. Arranged in superimposed relation with respect to the disc 28 is a moveable disc 30 mounted for rotational movement by means of a bolt 31 extending axially through both of said discs.

The disc 30 forms a support for the arm A with the latter bolted thereto in the manner shown in Fig. 5 and extending radially therefrom with the lure L mounted on the outer end of the latter. The arm A and consequently the disc 30 is normally urged to a retracted position with respect to the race track R and the slot 16 so that the lure is disposed within the housing H. This is effected through the medium of a coiled contractile spring 32 secured at

[fol. 189]

one end of the arm A and at its opposite end of the chassis 17, all in the manner clearly shown in Fig. 3.

To maintain the arm A in projected position wherein the lure L is disposed directly above the track R, a latch 33 pivoted at the point 34 is adapted to engage within recesses 35 formed in the discs 28 and 30 so as to lock the the disc 30 against rotation upon the disc 28. This latch 33 is normally urged to latching position through the action of gravity, but is adapted to be moved to releasing position by means of a trip 36 located between the track rails 15 and in the path of movement of the latch 33. The trip 36 is capable of tripping and non-tripping positions, and to this end it is mounted on a shaft 37 journaled in bearings 38 and provided with an operating crank 39 which can be extended to any suitable point for operation as will be understood from the consideration of Fig. 2.

To provide positive means for securing the arm A in retracted position and to prevent any swaying movement thereof when in such position, a spring latch 39 is secured to the yoke 29 so as to engage in a notch 40 formed in the movable disc 30, it being clear by consideration of Fig. 3 that the notch is in registration with the latch only when the arm A is in retracted position.

In the operation of the racing apparatus, the supply of current to the motor 21 of the conveyor car is controlled by rheostat 41 within a tower 42 adapted to

be occupied by an operator and located at one side of the track as clearly shown in Fig. 1. A grandstand 43 may be provided for accommodation of the audience, as is clearly shown in Fig. 1. When current is supplied to the motor, a driving of the rear wheels 18 is effected to cause forward movement of the car K, and with the arm A in extended

[fol. 190]

position to dispose the lure within the race track, which lure is caused to rapidly move along and above the track thereby inducing the animals to race about the track as will be understood. By virtue of the fact that the conveyor track is endless, the lure can be continuously moved throughout the entire length of the race track thereby inducing the animals to traverse the track as many times as desired.

When it is desired to terminate the race, the trip 36 is moved to tripping position so that when the car passes its point, the latch 33 will engage the trip and thus be moved free of the disc 30 to allow the spring 32 to effect a retraction of the arm A so that the lure is drawn into the housing and out of sight of the animals.

Although I have herein shown and described only one form of racing apparatus embodying my invention, it is to be understood that various changes and modifications may be made herein without departing from the spirit of the invention and the spirit and scope of the appended claims.

26
27
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32

[fol. 191] I claim as my invention:

1. A racing apparatus of the character de-
e
Per A. scribed comprising an endless rac[h]* track, an endless conveyor track within the area defined by the race track, a slotted housing for the conveyor track, a car movable over the conveyor
Per B. track and within the housing, [and]* a lure
Insert B¹. sup- ∧ [porting arm sustained on the car and
B¹
extending through the slot of said housing to position the lure within the race track.]*

2. In a racing apparatus of the character described, a race track, a conveyor track, a housing for the conveyor track, a car movable over the conveyor track, and a lure sustaining arm movably supported on the car to occupy an extended position in which the lure is disposed in the race
(4)
Insert C¹. tract ∧ [and]* a retracted position in which
C¹
the lure is withdrawn into the housing.

3. In a racing apparatus of the character described, a race track, a conveyor track, a housing for the conveyor track, a car movable over the conveyor track, a lure sustaining arm movably supported on the car to occupy an extended position in which the lure is disposed in the race track and a retracted position in which the lure is withdrawn into the housing, means for normally urging the arm to the retracted position, means for retaining the arm in extended position,

---

[Words enclosed in brackes erased in copy.]

and means for releasing said retaining means to effect a retraction of said arm at a predetermined point within the race track.

525,538 7

[fol. 192] 4. In a racing apparatus of the character described, a car, a lure supporting arm movably sustained on the car to occupy either of two extreme positions, means for urging the arm to one extreme position, means for retaining the arm in the other extreme position against the action of said urging means, and means disposed in the path of movement of said retaining means for releasing the latter to permit said arm to respond to the action of said urging means.

5. In a racing apparatus of the character described, a car, a lure supporting arm movably sustained on the car to occupy either of two extreme positions, means for urging the arm to one extreme position, means for retaining the arm in the other extreme position against the action of said urging means, and a trip disposed in the path of movement of said retaining means movable to occupy tripping and non-tripping positions with relation to said retaining means.

6. In a racing apparatus of the character described, a car, a stationary member sustained on the

Insert B'. ^ [car, a movable member superimposed with B' a lure relation to the station-]* ary member, [an]* arm fixed to the movable member, means for urging the arm and movable member to one extreme position, a latch for securing the movable member in another extreme position against the action of said urging means, and a trip adapted to be engaged by said latch for moving the latter to released position with respect to the movable member.

525,538 8

[fol. 193] 7. In a racing apparatus of the character described, a car, a disc fixedly secured to the car, a second disc movably sustained on the first disc, an arm fixed to the movable disc, a spring associated with said arm for urging the latter to one extreme position, a spring latch engageable with said discs for retaining the arm in urged position, a gravity latch engaging the discs for securing the arm in

another extreme position against the action of said spring, and a trip for moving the gravity latch to released position.

Add A[1]. Cls. 8-9.

525,538 9

[fol. 194] In testimony whereof I have signed my name to this specification.

William C. Creveling.

Oath

STATE OF CALIFORNIA,
County of Los Angeles, ss:

William C. Creveling, the above-named petitioner, being sworn, deposes and says that he is a citizen of the United States and resident of Los Angeles, in the County of Los Angeles, State of California, and that he verily believes himself to be the original, first, and sole inventor of the improvements in animal racing tracks described and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to this application, and that no application has been filed by him or his representatives or assigns in any country foreign to the United States.

(Applicant sign here:) William C. Creveling.

Subscribed and sworn to before me this 19th day of December, 1921. (Signature of officer administering oath:) Mabel E. Hennecke, Notary Public in and for the County of Los Angeles, State of California. My commission expires Nov. 7, 1925. (Seal.)

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[fol. 195] 2-260

Div. 7, Room 312

V, Paper No. 2

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All commun-cations respecting this application should give the serial number, date of filing, title of invention, and name of the applicant.

Department of the Interior, United States Patent Office,
Washington

Oct. 27, 1922.

Hazard & Miller, 506 Central Bldg., Los Angeles, Calif.:

Please find below a communication from the Examiner in charge of the application of W. C. Creveling, filed Dec. 29, 1921, Animal Racing Track Serial No. 525,538.

Thomas E. Robertson, Commissioner of Patents.

Fig. 7 described in lines 8 to 11 page 2 of the specification should be numbered on the drawing.

Claim 1 is rejected on Smith, 1,379,224, May 24, 1921, 46-73.

Claims 2 to 6, inclusive, are rejected on Smith and Everett, 1,052,807, Feb. 11, 1913, 46-73. There is no invention in disposing the lure of Smith within the housing in view of Everett. Cable 8 of Everett is the equivalent of the card of the claims especially in view of Smith. It is immaterial whether the lure falls by gravity as in Everett or is retracted by a spring as claimed.

Claim 7 is allowed.

C. G. Jarboe, Examiner.

C. J.

525,538 11

[fol. 196] Mail Room, U. S. Patent Office, Dec. 14, 1922.
U. S. Patent Office, Dec. 15, 1922, Division VII.

=3

Amendment A

Div. 7, Room 312

W. C. Creveling. Animal Racing Track. Filed Dec. 29th, 1921. Serial No. 525,538

Los Angeles, Calif., December 9th, 1922.

Hon. Commissioner of Patents, Washington, D. C.:

SIR: In response to the Office letter of October 27th 1922, please amend the above entitled application as follows:

Claim 1, line 2, change "rach" to race.

Add the following:

A¹. 8. A racing apparatus of the character described comprising an endless race track, a conveyor track within the area defined by the race track, a car movable over the conveyor track, [and]* a lure supporting arm sustained on the car for movement over the race track.

Insert B¹.

B¹

9. A racing apparatus of the character described comprising an endless race track, an endless conveyor track within the area defined by the race track, [and]* a lure carrying car movable over the conveyor track.]*

Insert [B²]* C².

[B²]* C²

Remarks

The Examiner is respectfully asked to instruct the Chief Draftsman to apply figure 7 to the unnumbered figure at the bottom of Sheet 2.

In interpreting applicant's claims in view of the references, it is evident that the Examiner has failed to appre-

[*Words and figures enclosed in brackets erased in copy.]

[fol. 197] ciate the importance of providing an endless conveyor track in conjunction with an endless race track so as to permit of the movement of the lure around the race track any number of times to induce the animals to traverse the race track one or more times. This is a primary object of applicant's invention, and as he interpretes the references, neither is capable of effecting such a movement of the lure. In Everett, the lure can only traverse the track once when it disappears into the well casing 22.

In view of the foregoing remarks, it is contended that applicant is rightfully entitled to the combinations as set forth in claims 1, 8 and 9.

It is contended that claim 3 clearly differentiates from the references in the last five lines thereof, the refernces failing to disclose any means by which the lure supporting arm is normally urged to retracted position, and the other means set forth.

Claims 4, 5 and 6 so clearly differentiate from the references as not to warrant discussion. The statement that it is immaterial whether the lure falls by gravity as in Everett or is retracted by a spring is thought to be in error. Applicant provides positive means for actuating the lure supporting arm, and the gravity means of Everett cannot be considered its equivalent

It is therefore believed that upon reconsideration, the Examiner will withdraw his objections and allow the claims.

Respectfully submitted.

Hazard & Miller, Attorneys for Applicant.

525,538 13

EDJ:L.

[fol. 198] #4

Docket Division, Apr. 12, 1923, U. S. Patent Office.
Mail Room, Apr. 12, 1923, U. S. Patent Office.

Doc.

Atlantic City, N. J., April 10, 1923.

Hon. Commissioner of Patents.

Sir: In the matter of my application for Letters Patent for improvement in Animal Racing Tracks, filed December

29, 1921, Serial No. 525,538, I hereby constitute and appoint John A. Wiedersheim and E. Hayward Fairbanks, constituting the firm of Wiedersheim & Fairbanks, of No. 1232 Chestnut Street, Philadelphia, Pennsylvania, my attorneys in all matters relative to the same.

I revoke all former powers of attorney.

William C. Creveling (formerly of Los Angeles, Cal., at present 104 S. Montpelier Ave., Atlantic City, N. J.).

(25-cent documentary stamp.)

Accepted Apr. 13, 1923. T. E. Robertson, Commissioner.

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[fol. 199]

EEG

2-069

#5

Address only the Commissioner of Patents, Washington, D. C.

Department of the Interior, United States Patent Office, Washington, D. C.

April 13, 1923.

You are hereby informed that your power of attorney has been accepted in the matter of the application of William C. Creveling for Letters Patent for an improvement in animal racing tracks, No. 525,538, filed Dec. 29, 1921.

Very respectfully, Thomas E. Robertson, Commissioner.

Wiedersheim and Fairbanks, 1232 Chestnut St., Philadelphia, Pa.

525,538 15

[fol. 200]

EEG

2-069

Address only the Commissioner of Patents, Washington, D. C.

Department of the Interior, United States Patent Office, Washington, D. C.

April 13, 1923.

You are hereby informed that your power of attorney has been revoked in the matter of the application of William C. Creveling for Letters Patent for an improvement in animal racing tracks, No. 525,538, filed Dec. 29, 1921.

Very respectfully, Thomas E. Bobertson, Commissioner.

Hazard and Miller, 506 Central Bldg., Los Angeles, Calif.

525,538 16

[fol. 201] 260

V, Paper No. 6

Div. 7, Room 312

Address only "The Commissioner of Patents, Washington, D. C." and not any official by name.

All communications respecting this application should give the serial number date of filing of Invention. and name of the applicant.

Department of the Interior, United States Patent Office, Washington

May 9, 1923.

U. S. Patent Office, May 9, 1923, Mailed.

Wiedersheim & Fairbanks, 1232 Chestnut St., Philadelphia, Pa.:

Please find below a communication from the Examiner in charge of the application of W. C. Creveling, filed Dec. 29, 1921, animal racing track, Serial No. 525,538.

Thomas E. Robertson, Commissioner of Patents.

In response to amendment filed Dec. 14, 1922.

Claim 1 is again rejected on Smith of record in which every feature of the claim is clearly disclosed in the same relation and performing the same function. The claim is further rejected on Smith 1,410,842, Mar. 28, 1922 46-73 (Filed Aug. 28, 1920).

Claim 2 is rejected on either of the Smith references or on either Smith especially in view of Everett of record.

Smith 1,379,224 shows an arm 26, pivoted at 25 and retained in one position by the spring 40, Figs. 2 and 5. There is no particular structural relation between the casing and the lure of the claim. It is immaterial as claimed whether the lure is urged to operative or inoperative position by the spring. Lure sustaining arm 17 of Everett is clearly shown in Figs. 3 and 5 as movably supported to occupy the two positions of the claim. There would be no invention in providing either Smith with the lure sustaining arm of Everett.

The relation between the stationary member, line 2,

525,538 17

[fol. 202] claim 6 and other features of the claim should be included.

Claims 2 to 5 inclusive are upon reconsideration allowable, and claim 6 covers allowable subject matter.

Claim 7 stands allowed.

Claims 8 and 9 are rejected as directly anticipated by either Smith or Everett all above mentioned.

The lure of Smith 1,379,224 may be carried twice or more around an endless track as stated in lines 10 to 20 of page 3 of the specification. Stop 24 of Everett may be moved and replaced. The above mentioned features are further not recited in the claims.

C. G. Jarboe, Examiner.

CJ.

525,538 18

[fol. 203] #7

Amendment B

Application Div., May 31, 1923, U. S. Patent Office.
U. S. Patent Office, Jun. 1, 1923, Division VII

In the United States Patent Office

Before the Examiner in Room 312

In the Matter of the Application of William C. Creveling for Patent for Improvement in Animal Racing Tracks. Filed Dec. 29, 1921. Serial No. 525,538

Phila., Pa., May 28th, 1923.

Hon Commissioner of Patents, Washington, D. C.

Sir: I hereby amend my application in answer to the Office Letter of May 9th, 1923, as follows:

Page 2, line 28, after "slot" insert "or passage".
Claim 1, cancel "and" line 5, before "a lure".
Cancel lines 6, 7 and 8, and insert.

B. porting arm, a horizontally arranged movable member pivotally mounted on the car and having said arm rigidly connected therewith a latch on the car adapted to be engaged with said member to lock the latter in the operative position of the lure, a trip member adapted to engage said latch to release said member, and means connected with said arm and car adapted to automatically retract the lure from the track to an inoperative position.

Claim 2, line 6, cancel "and" and insert

Sub. C[1].

B[2]. "means for locking said arm in said position, and a device connected with said arm and the car automatically acting to place said arm in"

[Matter enclosed between rules erased in copy.]

Claim 6, cancel line 3, and insert

B[3]. "car, a movable member mounted on said station-"

Line 4, cancel "an" and insert "a lure".
Claim 8, line 4, cancel "and".
Line 6, after "track" insert

B[4]. a latching device for said arm in the operative position of the lure, means for releasing said device, and means connected with said arm and the car adapted to automatically retract the arm to an inoperative

525,538 19 over

[fol. 204] position for the lure

Claim 9, line 4, cancel "and".
Cancel the last line, and insert

Sub. C^2.

B^5. "a car movable on said conveyor track, a housing on the conveyor track, said housing having a passage in its side, a lure carrying arm rotatably mounted on the car, said arm being movable in opposite directions in said passage, means for locking said arm in the operative position of the lure, and means for automatically retracting said arm to an inautomatic position of said lure in said housing."

[Matter enclosed between rules erased in copy.]

Remarks

The rotatable carrier of the lure arm has thereon means for locking it in the operative and inoperative position of the lure. Then it has the spring 32 connected with it to become operative to automatically retract the arm when unlatched from the operative position of the lure on the track to place the arm in an inautomatic position in the housing for which purpose the latter has in its side the slot or passage to allow the arm to move therein in its opposite motions.

Then the locking latch 33 meets in its path the trip 36 set by the manually operated crank arm 39, and so is drawn away from the rotatable member 30 when the spring 32 causes an automatic rotation of the arm into the housing through the passage 16.

Smith's spring 40 is designed to have the wheel 28 run on the ground and he provides also the shoe 30 run on the ground. Such features are not needed by me since my lure arm is rigidly connected with the rotating plate 30. I also dispense with hinges or hinged connections for the lure arm on the car.

It is believed that I have valuable features in my construction as not existing in the references, and so it is believed that patentability is presented as now claimed.

All of which is respectfully submitted for the favorable consideration of the Examiner.

William C. Creveling, by Weidersheim & Fairbanks, Attorneys.

[fol. 205] 2-260

Div. 7, Room 312

V, Paper No. 8

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number date of filing, title of Invention, and name of the applicant.

Department of the Interior, United States Patent Office, Washington

June 7, 1923.

U. S. Patent Office, Jun. 7, 1923, Mailed.

Wiedersheim & Fairbanks, 1232 Chestnut St., Philadelphia, Pa.:

Please find below a communication from the Examiner in charge of the application of W. C. Creveling, filed Dec. 29, 1921, Animal Racing Track, Serial No. 525,538.

Thomas E. Robertson, Commissioner of Patents.

In response to amendment filed May 31, 1923.

Claim 2 as amended is incomplete as the lock releasing means an essential element is not included. This claim is further inaccurate as the device connecting the arm and car does not automatically withdraw the arm until the arm is unlocked and the unlocking means is further attached to neither the arm nor the car as apparently inferentially included in the claim.

Claim 2 is accordingly rejected as not distinctly defining the invention.

Claim 2, if amended to include the locking means for the arm, would then be a duplicate of allowed claim 8.

"Inautomatic" in the next to the last line of claim 9 is not understood and should probably be inoperative.

Claim 9 is rejected as incomplete for reasons stated in the rejection of claim 2, the releasing means for the lock being omitted from the claim.

With the above exceptions, this case is in condition for allowance.

C. G. Jarboe, Examiner.

C. J.

525,538 21

[fol. 206] U. S. Patent Office, Jun. 19, 1923, Division VII.

#9

Amendment C

In the United States Patent Office

Before the Examiner in Room 312

In the Matter of the Application of William C. Creveling for Patent for Improvement in Animal Racing Tracks. Filed Dec. 29, 1921. Serial No. 525,538

Phila., Pa., June 16, 1923.

Hon. Commissioner of Patents.

Sir: I hereby amend my application in answer to the Office Letter of June 7th, 1923, as follows:

Claim 2, cancel the amendment to line 6 and substitute

C². a lock for said arm in said position, means for releasing said lock, and a device connected with said arm and a member on the body of the car automatically acting to place said arm in

Claim 9, cancel the amendment to the last line and substitute

C³. a car movable on said conveyor track, a housing on the conveyor track, said housing having a passage in its side, a lure carrying arm rotatably mounted on the car, said arm being movable in opposite directions in said passage, a lock for said arm in the operative position of the lure, means for releasing said lock, and means for automatically retracting said arm to an inautomatic position of said lure in said housing.

Sig.

Remarks

The requirements of the Examiner as to claims 2 and 9 are appreciated. Claim 2 is limited to a device auto-

matically acting to place the arm in a retracted position in which the lure is withdrawn into the housing.

Claim 8 is limited to "means adapted to automatically retracting the arm to a inoperative position for the lure."

For the fullest protection to me, it is asked that claims 2 and 8 may both be allowed, all of which is respectfully

525,538 22

[fol. 207] submitted for the favorable consideration of the Examiner.

William C. Creveling, by Weidersheim & Fairbanks, Attorneys.

[fol. 208] 2—181

Div. 7. V

Serial No. 525,538

Address only The Commissioner of Patents, Washington, D. C.

[Marginal notes:] In remitting the final fee give the serial number at the head of this notice. Uncertified checks will not be accepted.

Department of the Interior, United States Patent Office

Washington, June twenty-two, 1923.

William C. Creveling, Assor., etc.

Sir: Your application for a patent for an improvement in Animal Racing Track, filed Dec. 29, 1921, has been examined and allowed. 9 claims.

The final fee, twenty dollars, must be paid not later than six months from the date of this present notice of allowance. If the final fee be not paid within that period, the patent on this application will be withheld, unless renewed with an additional fee of $20, under the provisions of Section 4897, Revised Statutes.

The office delivers patents upon the day of their date, and on which their term begins to run. The printing, photolithographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will require

about four weeks, and such work will not be undertaken until after payment of the necessary fee.

When you send the final fee you will also send, distinctly and plainly written, the name of the inventor, title of invention, and serial number as above given, date of allowance (which is the date of this circular), date of filing, and, if assigned, the names of the assignees.

If you desire to have the patent issue to assignees, an assignment containing a request to that effect, together with the fee for recording the same, must be filed in this office on or before the date of payment of final fee

After issue of the patent uncertified copies of the drawings and specifications may be purchased at the price of ten cents each. The money should accompany the order. Postage stamps will not be received.

Final fees will not be received from other than the applicant, his assignee or attorney, or a party in interest as shown by the records of the Patent Office.

Respectfully, Thomas E. Robertson, Commissioner of Patents.

Wiedersheim & Fairbanks, 1232 Chestnut St., Philadelphia, Pa.

525,538 24

[fol. 209] 2—327

Final Fee Paid to United States Patent Office

(Be careful to give correct Serial No.)

Serial No.: 525,538.
Inventor: William C. Creveling.
Patent to be Issued to —— ——.
Name of Invention as allowed: Animal Racing Track.
Date of payment: December 22, 1923.
Fee: Final, $20.
Date of filing: Dec. 29, 1921.
Date of circular of allowance: June 22, 1923.

The Commissioner of Patents will please apply the accompanying fee as indicafed above.

Wiedersheim & Fairbanks, Attorneys.

Send patent to Weidersheim & Fairbanks, 13th & Chestnut Streets, Philadelphia, Pa.

525,538 25

Defendants' Exhibit No. 2

211-212

May 10, 1927.

1,628,518

J. L. SHAUGHNESSY

DISAPPEARING RABBIT FOR DOG RACES

Filed July 23, 1926

2 Sheets-Sheet 1

Fig. 1.

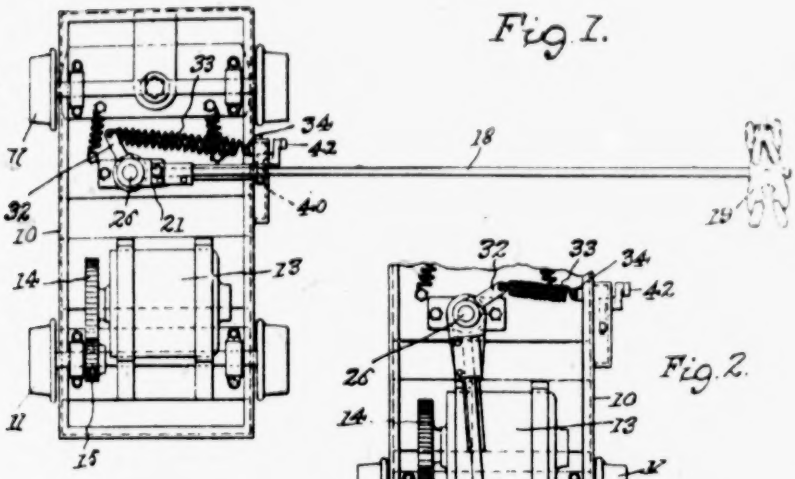


Fig. 2.

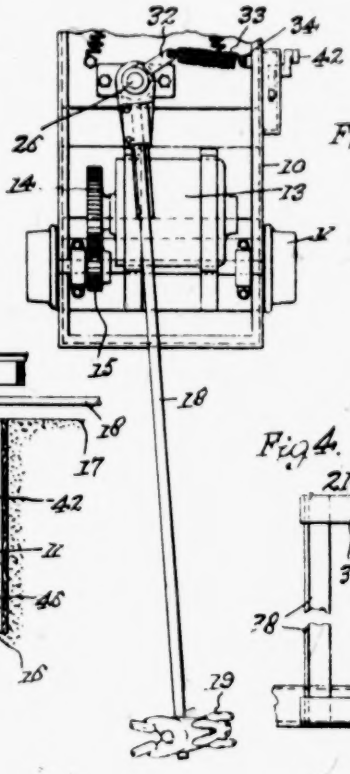


Fig. 3.

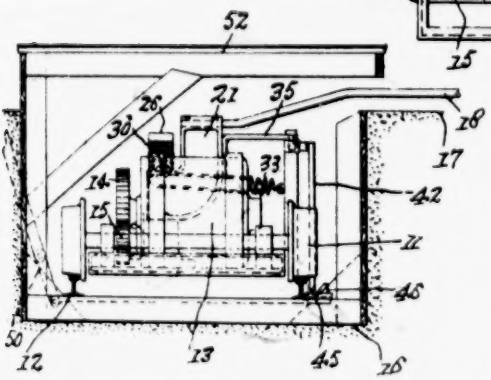
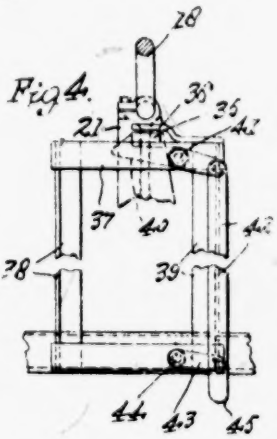


Fig. 4.



INVENTOR.

J. L. Shaughnessy

BY

Mawhinney & Mawhinney

ATTORNEYS.

May 10, 1927. **1,628,518**

J. L. SHAUGHNESSY

DISAPPEARING RABBIT FOR DOG RACES

Filed July 23, 1926 2 Sheets-Sheet 2

Fig. 7.

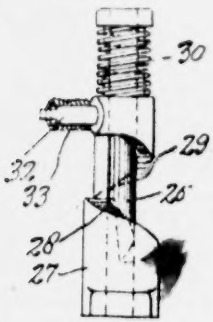


Fig. 8

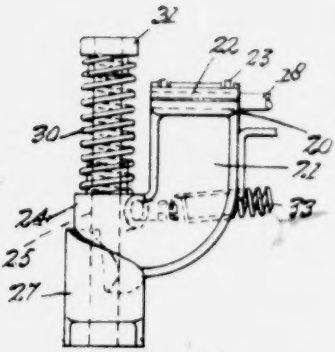


Fig. 6.

Fig. 9

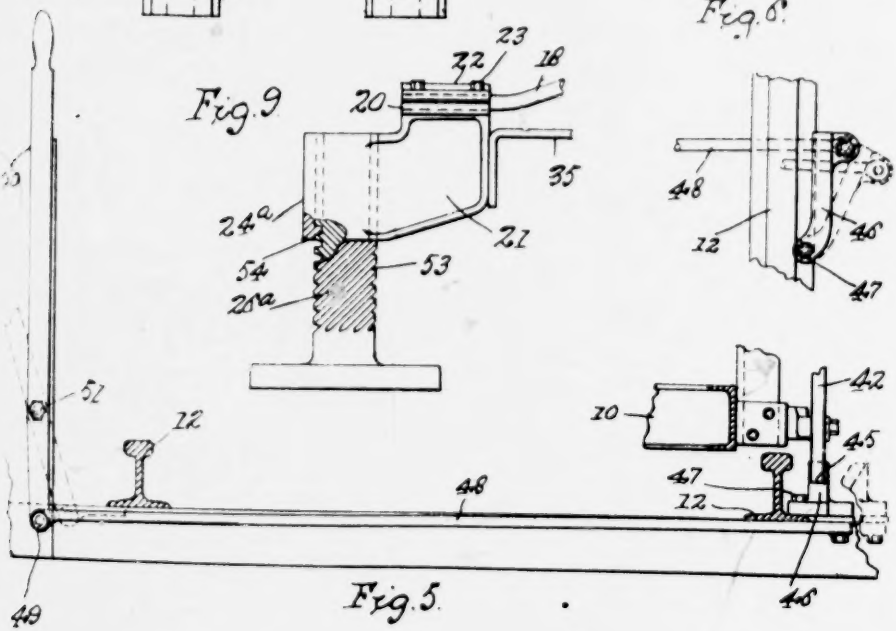


Fig. 5.

INVENTOR.

J. L. Shaughnessy

BY

Mawhinney & Mawhinney

ATTORNEYS.

[fol. 210] [CLERK'S NOTE.—Drawings and copy of patent with file wrapper are same as defendants' Exhibit 4—Creveling Patent No. 1,481,313 (shown at page 215)—and not reproduced here.]

2-421

1921

Contents

12/3/23. 6 Deeds.

46. Games and Toys, Arenas.

1. Application, — papers.
2. Rej., Oct. 27, 1922.
3. Amendment A, Dec. 14, 1922.
4. Revocation and power of attorney, April 12 23.
5. Notices of revocation and acceptance, Apr. 13 23.
6. Rej., May 9, 1923.
7. Amendment B, May 31, 1923.
8. Rej., June 7, 1923.
9. Amendment C, June 18, 1923.

525,538 26

(Here follow drawings, side folios 211-212 and 213-214)

[fol. 215] Patented May 10, 1927. 1,628,518

United States Patent Office

John L. Shaughnessy, of Harvey, Illinois, Assignor of One-half to James V. Mondi, of Chicago, Illinois

Disappearing Rabbit for Dog Races

Application filed July 23, 1926. Serial No. 124,474

The present invention relates to improvement in disappearing rabbit for dog races, and has for an object to provide an escape for a mechanical rabbit, whereby the rabbit may be made to disappear from the track and sight of the

racing greyhounds after the running of a race or a contest of skill, speed or endurance on a circular or other track.

The invention has for another object to provide a compact noiselessly operating device for the purposes above stated, in which the mechanical performance will be entirely reliable.

With the foregoing and other objects in view, the invention will be more fully described hereinafter, and will be more particularly pointed out in the claims appended hereto.

In the drawings, wherein like symbols refer to like or corresponding parts throughout the several views:

Figure 1 is a top plan view of a disappearing rabbit construction, constructed according to the present invention, with the rabbit in the extended position.

Figure 2 is a similar view with parts broken away, showing the rabbit in the retracted position.

Figure 3 is a vertical section taken through the housing and trench in which the rabbit carriage moves and showing the carriage in end elevation.

Figure 4 is a fragmentary side view of the carriage showing the latching mechanism.

Figure 5 is a cross-section taken on an enlarged scale through the tracks and showing in elevation the trip mechanism.

Figure 6 is a fragmentary top plan view of a portion of the trip mechanism.

Figure 7 is an enlarged detached view of the supporting post.

Figure 8 is a similar view taken at right angles with the parts in a subsequent position; and

Figure 9 is a view similar to Fig. 8, showing a slight modification.

Referring more particularly to the drawings, 10 designates a vehicle or carriage having flanged wheels 11 for supporting it upon the rails 12, shown in Figs. 3 and 5. The car is driven by the use of appropriate power, for instance by the electric motor 13 through the gearing 14 and 15.

The track 12 is laid in a trench 16, shown in Fig. 3 and disposed parallel with the race course indicated at 17. The track may be circular or straight.

The carriage 10 supports the arm 18 to the outer end of which is affixed the mechanical rabbit 19. This arm 18 is

at its inner end bent downwardly and removably secured in a bearing 20, upon the the upper end of an angle bracket 21, the arm being held in the bearing by means of a removable cap plate 22 secured as by the bolts or other fastenings 23 to the bracket.

The bracket arm, as indicated in Fig. 3, is provided with a sleeve 24, having the vertical opening 25 therethrough to receive the vertical pin 26, upon which the bracket 21 is adapted to turn. Extending about the lower portion of the pin is a block 27, both block and pin being appropriately secured to the bed of the carriage 10, and the block being provided upon its upper edge with the inclined, spiral or cam surface 28, for cooperating with the complemental inclined spiral or cam surface 29 upon the lower edge of the bracket sleeve 24. Above the bracket sleeve is a coil tension spring 30, wound about the pin 26 and abutting at its upper end against the head 31 of the pin and at its lower end against the sleeve 24.

The sleeve and bracket construction carry the laterally extending arm 32 to the outer end of which is secured one end of the coil spring 33, the other end of which is secured to a fixed part 34 on the carriage.

The bracket 21 also carries the latching finger 35 extending beneath the rabbit supporting arm 18 and having its outer portion positioned to engage within a guiding and housing clip 36, supported at the side of the car frame or upon a horizontal rail 37 carried upon the standards 38 and 39, which are affixed to the longitudinal side beams of the carriage or some part thereof. The finger is held in the clip 36 by the action of a latch or dog 40 pivoted at 41 upon the rail 37 at a point intermediate its ends. This latch is pivoted to the upper end of the link 42, which extends down substantially vertically, and is also pivoted near its lower end to a guide arm 43 pivoted at 44 upon the carriage. The lower projecting nose 45 of the link 42 extends down and into the path of a trip wedge 46, shown more particularly in Figs. 5 and 6. This trip wedge is pivotally secured, as indicated at 47 to the track or roadbed, and is adapted to [fol. 216] swing to the two positions indicated in Fig. 6. The movement of the trip is accomplished through a rod 48 pivoted to the free end of the trip and extending transversely across beneath the rails 12 to the opposite side of the track, where it is pivoted as indicated at 49 to the lower

end of an operating lever 50, having the intermediate fulcrum point 51 about a suitable support.

In the operation of the device, the parts are in the position shown in Fig. 1 during the course of the race, the carriage 10 being driven by the electric motor and causing the mechanical rabbit to precede the greyhounds. As soon as the dogs cross the tape or as soon as the race is finished, the carriage is arranged to pass by the trip 46, which will be placed in the position shown in full lines in Figs. 5 and 6 or in other words, directly in the path of the downwardly projecting nose 45 of the link 42, shown in Fig. 4. The wedge-shaped trip will thus raise the link, consequently lowering the latching dog 40 and causing the release of the latch finger 35. The spring 33 is then free to swing the rabbit carrying arm 18 from the position shown in Fig. 1 to that shown in Fig. 2, whereby the rabbit 19 itself is caused to disappear beneath the housing or platform 52, shown in Fig. 3. It will be noted also that the coil tension spring 30 shown more particularly in Figs. 7 and 8 will assist in this movement. When the rabbit 19 is drawn to the outer position, the high points of the cams 28 and 29 will engage, as indicated in Fig. 7, causing a raising of the sleeve 24 and bracket and a consequent compression of the tension spring 30. The tendency of the spring 30 is to urge the sleeve 24 downwardly, and this movement is assisted by gravity and by the engagement of the cam faces 28 and 29, which also cause a rotary movement in the bracket 21 and rabbit carrying arm 18, as the sleeve 24 descends along the pin 26.

A slightly modified construction is shown in Fig. 9, in which the pin 26' is provided with coarse threads 53, while the sleeve 24' is provided with similar threads 54 for engagement with the threads 53 on the post. The same tension spring 30 and return spring 33 may be mounted in conjunction with this construction, if desired. When beginning the next race, the wedge trip 46 can be shifted out of the way by the lever 50, allowing the carriage to pass, the arm 18 is swung outwardly and the latch 40 engaged with the finger 35. The motor 13 of the carriage is put in operation and the race proceeds. As many laps may be run as desired, whereupon the trip wedge 46 is swung into the path of the trip link 42 and the rabbit caused to disappear.

It is obvious that various changes and modifications may be made in the details of construction and design of the

Defendants' Exhibit No. 4 217-218

Jan. 22, 1924. 1,481,313

W. C. CREVELING

ANIMAL RACING TRACK

Filed Dec. 29, 1921 2 Sheets-Sheet 1

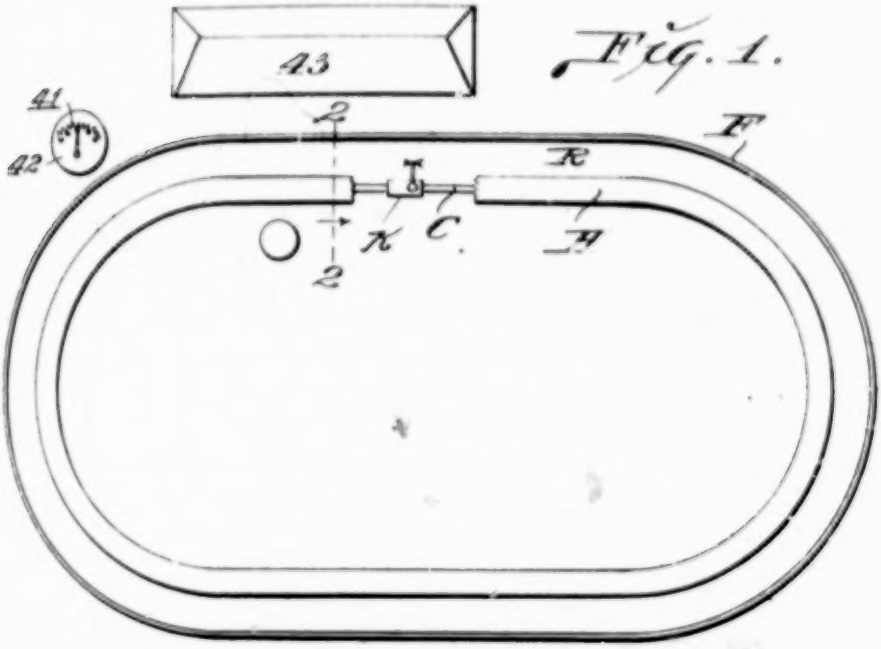
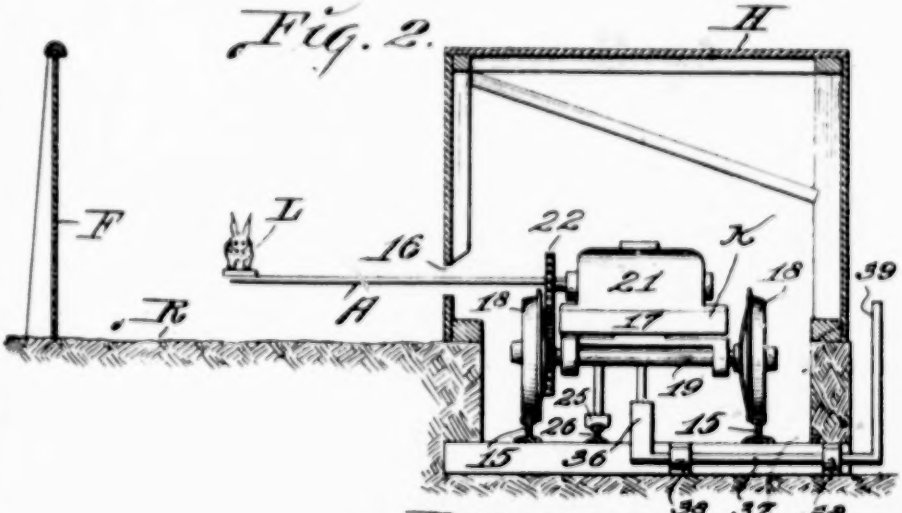


Fig. 1.

Fig. 2.



INVENTOR:—
WM. C. CREVELING.
By Hazard & Miller
ATTORNEYS.

219-220

Jan. 22, 1924. 1,481,313

W. C. CREVELING

ANIMAL RACING TRACK

Filed Dec. 29, 1921 2 Sheets-Sheet 2

Fig. 3

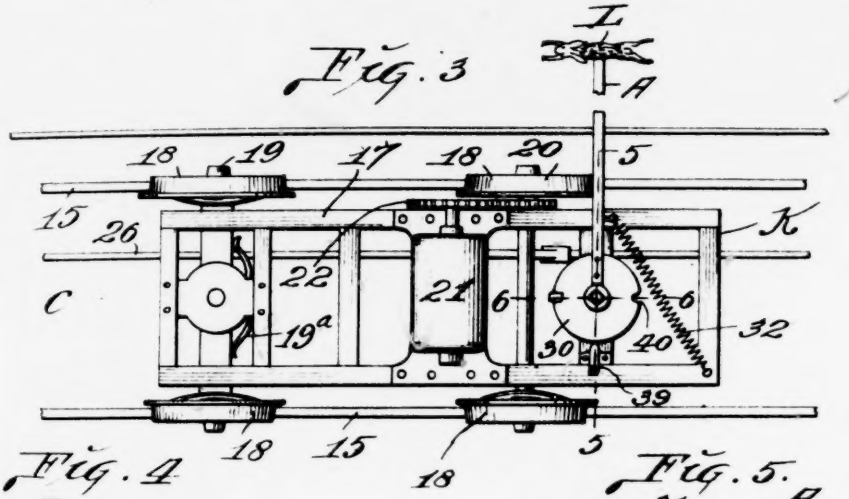


Fig. 4

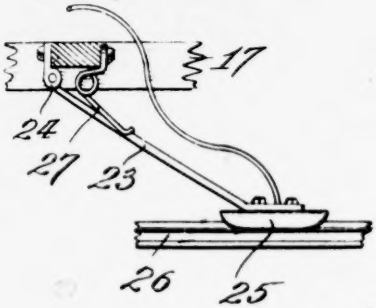


Fig. 5.

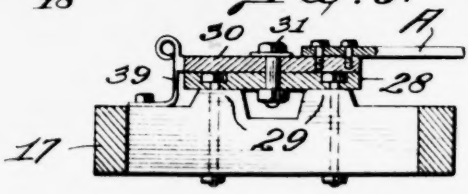


Fig. 6.

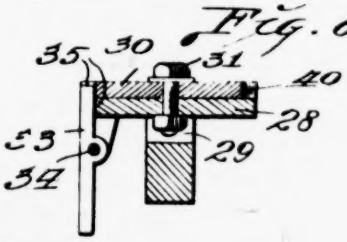
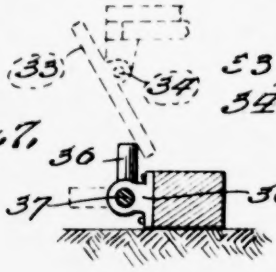


Fig. 7.



INVENTOR:—
WM. C. CREVELING.
By Hazard & Miller ATTORNEYS

above specifically described embodiment of this invention without departing from the spirit thereof.

I claim:

1. A device as described, comprising a carriage having a fulcrum thereon, a rabbit carrying arm having a pivotal and axial movement with respect to said fulcrum, yieldable means associated with said fulcrum for tending to shift said arm axially to cause the rabbit to disappear, and means associated with said arm and fulcrum for causing rotary movement of the arm on axial shifting.

2. A device as described, comprising a carriage, a rabbit carrying arm, a substantially vertical fulcrum on the carriage, a bracket carrying the arm and having a cam sleeve for rotating and axially sliding on said fulcrum, a cam block cooperating with said cam sleeve, and resilient means urging said sleeve upon said cam block for rotating the bracket and arm and moving the same downwardly to cause the rabbit to disappear.

3. A device as described, comprising a carriage, a rabbit carrying arm pivoted thereon, a latch finger associated with the arm, a clip on the carriage to receive the finger, a movable latch for holding the finger in said clip, a trip device associated with said latch, and a movable wedge block for engagement by said trip.

4. In a disappearing rabbit for dog races, a carriage, a rabbit carrying arm mounted on the carriage, means for normally urging the arm to turn into a retracted position, a latch on the carriage adapted to engage the arm when extended for holding the arm in such position, a link connected to the latch and extending downwardly below the carriage, a second link disposed between the carriage and first link for supporting the latter in substantially vertical position, a pivoted wedge block disposed in the path of the carriage, and means for shifting the block into the path of the lower end of said first link for gradually raising the same and releasing said latch to free the rabbit carrying arm.

In testimony whereof I affix my signature.

John L. Shaughnessy.

(Here follow drawings, side folios 217-218 and 219-220)

[fol. 221] Patented Jan. 22, 1924. 1,481,313

United States Patent Office

William C. Creveling, of Los Angeles, California, Assignor of One-third to William W. Finn, of San Diego, California, One-third to John O. Talbett, of Denver, Colorado, and One-sixth to Agnes Creveling, of Los Angeles, California

Animal Racing Track

Application Filed December 29, 1921. Serial No. 525,538

To all whom it may concern:

Be it known that I, William C. Creveling, a citizen of the United States, residing at Los Angeles, in the county of Los Angeles and State of California, have invented new and useful Improvements in Animal Racing Tracks, of which the following is a specification.

My invention relates to animal racing apparatus of that character in which dogs or other like animals are induced to race about a track by means of a lure or object conveyed mechanically along the track.

A purpose of my invention is the provision of a racing apparatus of the above described character including a lure conveying car which is movable over a conveyor track arranged within the area defined by the race track to permit of the forming of endless race and conveyor tracks so that the animals can be induced to traverse the entire race track one or more times.

It is also a purpose of my invention to provide a racing apparatus in which the lure conveying car is so constructed as to insure of its easy and unrestricted movement over the conveyor track, and one which includes a lure sustaining arm and mean co-operating therewith for automatically causing a retraction of the arm from the race track to effect a termination of a race.

I will describe one form of racing apparatus embodying my invention and will then point out the novel features thereof in claims.

In the accompanying drawings,

Figure 1 is a view showing in top plan a race track having applied thereto one form of racing apparatus embodying my invention.

Fig. 2 is an enlarged vertical sectional view taken on the line 2—2 of Fig. 1.

Fig. 3 is a top plan view of the lure conveying car comprised in the apparatus shown in the preceding views.

Fig. 4 is a fragmentary view partly in section showing the current collector and constituting a part of the conveyor car shown in Fig. 3.

Fig. 5 is an enlarged transverse section taken approximately on the line 5—5 of Fig. 3.

Fig. 6 is an enlarged cross section taken on the line 6—6 of Fig. 3, and with dotted lines showing a tripping device for a movable part of the apparatus.

Fig. 7 is a view similar to Fig. 6 showing one form of trip embodying my invention in engaging position with respect to the latch device.

Similar reference characters refer to similar parts in each of the several views.

Referring specifically to the drawings, my invention, in its present embodiment, comprises a race track R over which the animals are adapted to travel, this track, in the present instance, being of endless form as shown in Fig. 1 and encircled by a partition or fence F. At the inner side of and in a plane below the track R, is a conveyor track C also endless and including track rails 15 over which a lure conveying car designated generally at K is adapted to travel. The conveyor track and car are concealed and protected from the elements by a housing H formed on its track side with a relatively narrow slot or passage 16 in which is adapted to travel an arm A having a lure L supported thereon in the manner clearly shown in Fig. 2.

As illustrated to advantage in Fig. 3, the conveyor car K includes a chassis 17 supported for movement over the rails by means of wheels 18 fixed to axles 19 and 20, the former axle constituting the front axle of the car and being swivelly sustained on the chassis to allow of the necessary movement of the front wheels when traversing the endless curved protions of the track C. This swiveled front axle is yieldingly maintained in normal position by a suitable spring or springs, such as 19', that are secured to a fixed

portion of the chassis and bear on the rear side of said front axle at points to the sides of its axis of swinging movement. The axle 20 constitutes the rear and driving axle of the car and is adapted to be driven by an electric motor 21 through the medium of gears 22. Current is conveyed to the motor M by means of a current collector which, as clearly shown in Fig. 4, includes an arm 23 pivoted upon the chassis at the point indicated at 24 and carrying a shoe 25 normally urged into contact with the third rail 26 by means of a spring 27.

[fol. 222] As shown in Fig. 5, a stationary disc 28 is fixedly secured upon a yoke 29 rising from the chassis 17 and suitably secured thereto. Arranged in superimposed relation with respect to the disc 28 is a movable disc 30 mounted for rotational movement by means of a bolt 31 extending axially through both of said discs. The disc 30 forms a support for the arm A with the latter bolted thereto in the manner shown in Fig. 5 and extending radially therefrom with the lure L mounted on the outer end of the latter. The arm A and consequently the disc 30 is normally urged to a retracted position with respect to the race track R and the slot 16 so that the lure is disposed within the housing H. This is effected through the medium of a coiled contractile spring 32 secured at one end to the arm A and at its opposite end to the chassis 17, all in the manner clearly shown in Fig. 3.

To maintain the arm A in projected position wherein the lure L is disposed directly above the track R, a latch 33 pivoted at the point 34 is adapted to engage within recesses 35 formed in the discs 28 and 30 so as to lock the disc 30 against rotation upon the disc 28. This latch 33 is normally urged to latching position through the action of gravity, but is adapted to be moved to releasing position by means of a trip 36 located between the track rails 15 and in the path of movement of the latch 33. The trip 36 is capable of tripping and non-tripping positions, and to this end it is mounted on a shaft 37 journaled in bearings 38 and provided with an operating crank 39 which can be extended to any suitable point for operation as will be understood from the consideration of Fig. 2.

To provide positive means for securing the arm A in retracted position and to prevent any swaying movement thereof when in such position, a spring latch 39 is secured

to the yoke 29 so as to engage in a notch 40 formed in the movable disc 30, it being clear by consideration of Fig. 3 that the notch is in registration with the latch only when the arm A is in retracted position.

In the operation of the racing apparatus, the supply of current to the motor 21 of the conveyor car is controlled by rheostat 41 within a tower 42 adapted to be occupied by an operator and located at one side of the track as clearly shown in Fig. 1. A grandstand 43 may be provided for accommodation of the audience, as is clearly shown in Fig. 1. When current is supplied to the motor, a driving of the rear wheels 18 is effected to cause forward movement of the car K, and with the arm A in extended position to dispose the lure within the race track, which lure is caused to rapidly move along and above the track thereby inducing the animals to race about the track as will be understood. By virtue of the fact that the conveyor track is endless, the lure can be continuously moved throughout the entire length of the race track thereby inducing the animals to traverse the track as many times as desired.

When it is desired to terminate the race, the trip 36 is moved to tripping position so that when the car passes its point, the latch 33 will engage the trip and thus be moved free of the disc 30 to allow the spring 32 to effect a retraction of the arm A so that the lure is drawn into the housing and out of sight of the animals.

Although I have herein shown and described only one form of racing apparatus embodying my invention, it is to be understood that various changes and modifications may be made herein without departing from the spirit of the invention and the spirit and scope of the appended claims.

I claim as my invention:

1. A racing apparatus of the character described comprising an endless race track, an endless conveyor track within the area defined by the race track, a slotted housing for the conveyor track, a car movable over the conveyor track and within the housing, a lure supporting arm, a horizontally arranged movable member pivotally mounted on the car and having said arm rigidly connected therewith, a latch on the car adapted to be engaged with said member to lock the latter in the operative position of the lure, a trip member adapted to engage said latch to release said mem-

ber, and means connected with said arm and car adapted to automatically retract the lure from the track to an inoperative position.

2. In a racing apparatus of the character described, a race track, a conveyor track, a housing for the conveyor track, a car movable over the conveyor track, and a lure sustaining arm movably supported on the car to occupy an extended position in which the lure is disposed in the race track, a lock for said arm in said position, means for releasing said lock, and a device connected with said arm and a member on the body of the car automatically acting to place said arm in a retracted position in which the lure is withdrawn into the housing.

3. In a racing apparatus of the character described, a race track, a conveyor track, a housing for the conveyor track, a car movable over the conveyor track, a lure sustaining arm movably supported on the car to occupy an extended position in which the lure is disposed in the race track and a retracted position in which the lure is withdrawn into the housing, means for normally urging the arm to the retracted position, means for retaining the arm in ex- [fols. 223 & 224] tended position, and means for releasing said retaining means to effect a retraction of said arm at a predetermined point within the race track.

4. In a racing apparatus of the character described, a car, a lure supporting arm movably sustained on the car to occupy either of two extreme positions, means for urging the arm to one extreme position, means for retaining the arm in the other extreme position against the action of said urging means, and means disposed in the path of movement of said retaining means for releasing the latter to permit said arm to respond to the action of said urging means.

5. In a racing apparatus of the character described, a car, a lure supporting arm movably sustained on the car to occupy either of two extreme positions, means for urging the arm to one extreme position, means for retaining the arm in the other extreme position against the action of said urging means, and a trip disposed in the path of movement of said retaining means movable to occupy tripping and nontripping positions with relation to said retaining means.

6. In a racing apparatus of the character described, a car, a stationary member sustained on the car, a movable member mounted on said stationary member, a lure arm fixed to the movable member, means for urging the arm and movable member to one extreme position, a latch for securing the movable member in another extreme position against the action of said urging means, and a trip adapted to be engaged by said latch for moving the latter to released position with respect to the movable member.

7. In a racing apparatus of the character described, a car, a disc fixedly secured to the car, a second disc movably sustained on the first disc, an arm fixed to the movable disc, a spring associated with said arm for urging the latter to one extreme position, a spring latch engageable with said discs for retaining the arm in urged position, a gravity latch engaging the discs for securing the arm in another extreme position against the action of said spring, and a trip for moving the gravity latch to released position.

8. A racing apparatus of the character described comprising an endless race track, a conveyor track within the area defined by the race track, a car movable over the conveyor track, a lure supporting arm sustained on the car for movement over the race track, a latching device for said arm in the operative position of the lure, means for releasing said device, and means connected with said arm and the car adapted to automatically retract the arm to an inoperative position for the lure.

9. A racing apparatus of the character described comprising an endless race track, an endless conveyor track within the area defined by the race track, a car movable on said conveyor track, a housing on the conveyor track, said housing having a passage in its side, a lure carrying arm rotatably mounted on the car, said arm being movable in opposite direction in said passage, a lock for said arm in the operative position of the lure, means for releasing said lock, and means for automatically retracting said arm to an inautomatic position of said lure in said housing.

In testimony whereof I have signed my name to this specification.

William C. Creveling.

[fols. 225 & 226] DEFENDANTS' EXHIBIT No. 5

390

Department of Commerce, United States Patent Office

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents, in the matter of the Letters Patent of Owen P. Smith, Number 1,379,224, granted May 24, 1921, for Improvement in Dog-Racing Amusements.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this seventh day of January in the year of our Lord, one thousand nine hundred and twenty-eight and of the Independence of the United States of America the one hundred and fifty-second.

Thomas E. Robertson, Commissioner of Patents.

Attest: D. E. Wilson, Chief of Division. (Seal.)

(Here follows file-wrapper, patent No. 1,379,224, side folios 227-228)

[fol. 229] Patents. Trade-Marks. Infringements

Chester W. Brown & Co., Registered Patent Attorneys,
Room 510, 160 North Fifth Ave., Chicago

Aug. 30th, 1919.

Commissioner of Patents, Washington, D. C.

Sir: Herewith please find application of Owen P. Smith, for palent on Dog Racing Amusement, together with first government fee of *of* Fifteen Dollars. The drawings are in the same mail under separate cover.

Resp'y, Chester W. Brown.

15 Rec'd Sep. 4, 1919, U. S. Pat. Office.

321612 1

227-228

Series of 1913.

321612

(EXR'S BOOK) 210—13

No. 7

PATENT No. 1379224

MAY 24 192

Owen P. Smith,

Chicago,

Illinois,

Dog Racing Amusements,

ORIGINAL		RENEWED	
Petition	Sept. 4. 1919.		191
Affidavit	" 4. 1919		191
Specification	" 4. 1919		191
Drawing	3 Shts. " 4. 191 9.		191
Photo Copy	191		191
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Allowed	Nov 11 1919		191
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	191	MAY 24 1924	191
			191

Chester W. Brown, 160 N. Wells St. Chicago, Ill.

Geo. C. Stevenson

Room 509 - 513 - McGee Bldg Cody

Filed 4 Sept 1919 Int. Cl. 46-73

Dog Racing Amusement

[fol. 230] Mail Room, Sep. 4, 1919, U. S. Patent Office.

321,612

Paper No. 1

224 5547

Petition, with Power of Attorney

To the Commissioner of Patents:

Your petitioner, Owen P. Smith, a citizen of the United States and a resident of the City of Chicago, in the County of Cook and State of Illinois, and whose Post Office address is at 764 So. Kenneth Avenue in said City, prays that Letters Patent may be granted to him for the improvements in dog racing amusements set forth in the annexed specification;

And he hereby appoints Mr. Chester W. Brown, of 160 North Wells Street in said City of Chicago, State of Illinois, his attorney, will full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Signed at the City of Chicago, in the County of Cook and State of Illinois, this 26th day of August, 1919.

Owen P. Smith.

(25-cent documentary stamp.)

Specification

To all whom it may concern:

Be it known that I, Owen P. Smith, a citizen of the United States, residing at the City of Chicago, in the County of Cook and State of Illinois, have invented certain new and useful improvements in dog racing amusements, of which the follows is a specification.

[fol. 231] 5548

My invention relates to amusements in which dogs are induced to race about a track by means of a lure or object conveyed mechanically in advance of them.

The object of my present invention is to provide a suitable track, an electric conveyer operated thereon, and a lure or bait to attract the dogs to race thereafter.

Other objects reside in the mechanical construction of the housing for the track and conveyer, the braking mechanism for stopping the said conveyer, the means for mounting and carrying the lure, and the means for concealing the lure within its den at the end of the race.

With the foregoing, and other objects in view, the invention consists of the arrangement and combination of parts as hereinafter described and claimed, and while the invention is not restricted to the exact details of the construction disclosed herein, yet, for the purpose of illustrating a particular embod[y]*ment thereof, reference is had to the accompanying drawings, in which like reference characters designate the same parts in the several views, and in which

Figure 1 is a plan view of a track for dog racing, with my conveyer installed thereabout.

Fig[ure]* 2 is a section view of the housing for the track conveyor, etc., showing forward end view of conveyor, brakes removed.

Fig[ure]* 3 is a top plan view of the conveyor.

Fig[ure]* 4 is a section view of the conveyor taken along the line 1—1 Fig[ure]* 3, showing the brake equipment.

Fig[ure]* 5 is a detail of the brake releasing mechanism.

Fig[ure]* 6 is a detail of the door to the den.

Fig[ure]* 7 is a detail of the door to the conveyor housing.

[fol. 232] 5549

In the construction of my dog racing amusement, I provide a race track for the dogs, as 30, which may be circular, oval, kite-shaped, or any similar shape, and may be of such size as shall be best suited to the space available, and the purpose in view. This race track is fenced on one side by the low fence 31, and on the other side is in-

[*Erased in copy.]

31a

Ref. A. closed by the housing ∧ of the conveyor track, which surrounds said dog race track on the outer side. At some suitable location adjacent to the said track I have installed a raised
" A. platform or tower, as 32 within which are installed suitable electric switches, speed controllers, and such other electric mechanism as shall be best suited to control the operation of the conveyor as hereinafter described.

The housing for my conveyor track is constructed with the frame work of posts 1 and 2 arranged around the distance of the track in pairs, and at suitable distance apart. These posts are set in the ground as shown, and the posts 2 extend but a short distance above the surface of the ground, while the posts 1 extend above the top of the housing. The pairs of
20. posts 1 and 2 are suitably connected together by the cross pieces 3, forming ties for supporting the rails for the conveyor track 4—4, and also for the third rail 5 which carries the electric current for operating the conveyor car hereinafter described. For the purpose of sup-

1 a

Ref. A. porting the roof ∧ of the housing, and the overhanging side toward the track, I have provided brackets 6 mounted upon the inner sides of the posts 1 as shown, and I have also provided a

roof 1 a

" A. truss rod 8 which is attached to the ∧ [end of the bracket 6,]* passes over the top of the post 1, and is suitably anchored in the ground outside of the housing as at 9.

30. I have provided boards running lengthwise of the said course for lining said housing, as 12 fastened to the posts 1, 11 attached to roof 1 a

Ref. A. the ∧ [brackets 6,]* 10 suspended from the ends
" A. of the [bracket 6,]* and 13 secured to the posts 2, these forming a complete enclosure of the said conveyor track and conveyor, with the exception of

[*Words and figures enclosed in brackets erased in copy.]

(3) 321,612 4
[fol. 233] 5550

the space between the boards 10 and 13, where is provided an opening extending the entire circumference of the course for the purpose hereinafter explained.

Mounted to run upon the rails 4, 4 within the housing, I have provided an electric conveyor car, consisting of a frame of side bars 14, connected together by means of the cross bars 15 at their ends, and the additional cross bars 16 near the middle. Upon the cross bars 16 I have mounted

17

Ref. A 16 a suitable electric motor 17 for propelling said conveyor car. Secured to suitable brackets upon the side bars 14 I have provided the bearings 18 within which are journalled the axles 19, carrying at the outer ends thereof the car wheels 21 suitably attached thereto, and designed to run upon the rails of the track 4, 4. Mounted rigidly upon the axle front

" B at the [rear] I have also provided a gear wheel as 22 in mesh with a corresponding gear wheel 23 mounted upon the shaft 24 of the motor 17, and designed to impart motion from the motor to the car wheels. At 25 on the side of said car toward the dog race course, I have hingedly mounted the arm 26 extending through the opening between the side boards 10 and 13 of the housing, and out toward the middle of the dog race course. Near the outer end of said arm I have

28

Ref. D 26 mounted a wheel 28 preferably with rubber
" A tire to rotate on the ground, and support the end of said arm 26. Above said wheel I have provided a platform 27 for mounting upon it the lure 29 in shape of a stuffed rabbit or other suitable object to entice the dogs to chase it. At the point 40 I have connected to said arm 26 a spring, extending to and attached to the frame as shown, designed to hold the said arm, and the

[*Words and figures enclosed in brackets erased in copy.]

wheel at the end of said arm down with the wheel in contact with the ground. At 41 on the frame of said car I have provided a bracket extending downward, and carrying at its lower end the contact shoe 42 in contact with the third rail 3, said shoe being connected by suitable wiring with the electric motor 17 for conveying the current received from the third rail to said motor.

[At]* (4) 321,612 5

[fol. 234] 5551

At 43 I have provided a bracket extending upward from the frame of said conveyor car, and carrying at its upper extremity one or more shoes 44 for contact with the roof boards 11 of the housing, in case the car conveyor should jump off the rails, or for any reason should raise above said rails. Normally said shoes are out of engagement with the roof boards 11.

At 45 on the side bars of said conveyor car I have provided bearings for the brake rod shafts 46. Said brake rod shafts carry the brake shoes 47 positioned to be in proximity to the car wheels 21 and designed to engage said car wheels when required to brake the speed of said car, and to stop the same at the end of the run. Extending upwardly from said brake rod shaft I have provided the arms 48 having holes 49 bored near their extremity, through which passes the rod 50, threaded at its outer ends, and with nuts thereon, and a compression spring 51 for operating said brakes. The tension of said spring 51 may be increased or diminished by adjusting the nuts as desired.

Midway the length of said brake rod shafts I have provided another arm 52, extending both above and below said brake rod shaft. At the lower end of the arm 52 attached to the forward brake rod shaft, I have provided a rectangular opening, and a hole suitable for receiving a pin as 53 to hold the brake operating and releasing bar 54. At the rear the arm 52 is also provided with a rectangular opening at its lower end for receiving said brake releasing bar 54. Said brake releasing bar is constructed with ser-

*Words and figures enclosed in brackets erased in copy.

eral holes at its forward end for suitable adjustment by the pin 53, and at its rear end it is provided with a notch 55 for engaging the arm 52 at the rear, and when so engaged, holding the brake shoes 47 out of engagement with

60

Shaw the car wheels. At a suitable point in the course of the track, a trip is provided for engaging the rear curved end of the brake releasing bar 54, and disengaging it from the arm 52 at the rear of said car, permitting the springs 51 to press the shoes 47 into engagement with the car wheels, and by the friction reduce the

(5) 321,612 6

5552

speed of said car, and bring it to a stop after the electric

Wrong A

power is shut off. I have also provided

a'

Insert A' rings as 60 on the lower side of the frame of said car, designed to engage hooks mounted on the track at 59 for stopping said car at said point and holding it against forward movement in case the brakes shall for any reason be insufficient to bring the car to a stand still.

At 33 in the course of my track, I have provided a switch, with a track extending to the den or enclosure where the lure is to be concealed after the race. On the side of the hedging toward the track at the point 33 I have provided a side door, mounted upon hinges as shown at 34. During the race said door 34 is held open by means of the catch 35, but as the race is completed, and the car conveyor passes over the switch in entering the den, it trips the said catch, and closes said door against the admission of the dogs. I have also provided a second door, as 36 at the entrance to the den, which is likewise held open during the race by the catch 37. As the car and lure pass through said door into the den, the catch is released by the trip 38 as shown.

At a suitable point, as 57, a cage is provided for retaining the dogs until the race is ready to be run. At 58 a judge's stand is provided, and in front of said judges stand is provided a wire as usually employed on race courses for determining the winner. A Grand Stand may be provided as at 59 for accommodation of the audience.

(6) 321,612 7

[fol. 236] 5553

In the operation of my said device, the conveyor car with the lure is backed out upon the track across the switch 33 and the car is started slowly around the course in the direction indicated by the arrow. The dogs are retained within the cage until the lure passes opposite said cage, and at a pre-determined time the barrier retaining said dogs is raised, and the dogs are simultaneously released, to pursue said lure. The lure is then carried around the track by the electric conveyor car, (or may be carried twice or more around in smaller tracks) and usually as the lure comes down the home stretch, the power is cut off, and the car permitted to run by its own momentum, with the dogs chasing. As the dogs pass under the wire, the judges decide which are the winners. When the race is finished by passing once or more around the course, the switch 33 is thrown to side-track the conveyor car onto the track leading to the den, and the lure is carried through the trap doors 34 and 36, which are closed behind the conveyor car and the lure, and thus conceal the lure from the dogs and prevent their further pursuit thereof. As the car passes the trip 60, the brake mechanism is released, and the brakes are applied to the car wheels, to bring said car to a stop within the den. In case the car does not stop before reaching the hooks 56, the rings depending from the lower side of the frame engage with said hooks and thus bring the car to a full stop.

(7) 321,612 8

[fol. 237] 5554

Having thus described my invention, what I claim and desire to secure by Letters Patent, is the following:

Sub. B

Period A. Walsh. Insert A 2.

1. In a dog racing amusement, the combination of a race course suited for dogs [and]* a mechanical conveyor for carrying the lure or quarry in advance of the dogs. ^ A 2

Walsh. Insert A 3.

In an amusement, a race course suited for dogs, a mechanical conveyor at one side of said course, a lure carried midway of said course by said conveyor in advance of the racing dogs, ^ A 3

Per A. 3. In an amusement, the combination of a race track suited for dogs, a [covered]* rail track adjacent said course, a conveyor car mechanically operated upon said track, an arm attached to said car extending midway of said course, a wheel rotably mounted on said
" A arm, [and]* a lure mounted on said arm
A

[Matter enclosed between rules erased in copy.]

2, 4. In an amusement, the combination of a race course suited for dogs, a covered rail track adjacent said course on one side, a conveyor car mechanically operated upon said track, a horizontally extending arm hinged to said car extending midway of said course, a wheel rotably mounted near the end of said arm, and resting upon the ground, a platform supported by said arm and a lure or quarry mounted upon said platform for attracting the dogs.

3, 5. In a dog racing amusement, the combination of a race course suited for dogs, a housing adjacent said course on one side having an opening in the side toward the course, a rail track within said housing, an electrically operated car within said housing for operation upon said rail track, an electric conductor within said housing, a shoe carried by the car for contact with said conductor, friction brakes adjacent the wheels of said car, means for holding said brakes out of contact with said wheels, means on the track for releasing said brakes, a hinged arm extending horizontally from said car through the opening in the side of the housing, a wheel mounted upon said arm for rotation upon the ground, a platform also mounted upon said wheel and a lure mounted upon said platform.

(8) 321,612 9

[fol. 238] 5555

C, 6. In a Dog Racing Amusement, a race course suitable for dogs to race upon, a covered two rail track along one side of said course having a lateral opening on the side toward said course, a mechanically operated car for operation upon said track, an arm carried by said car extending through said opening, a wheel support for said arm resting

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[*Words and figures enclosed in brackets erased in copy.]

upon said course, a decoy or lure mounted upon said arm, a spring for holding said wheel in contact with the ground, brake mechanism adjacent the wheels of the car, a trip along said track for releasing said brakes, springs for applying said brakes to said car wheels, when so released, a shoe carried by the car in proximity to the roof of said covering, for engagement with said roof whenever the car rises off the track rails, rings depending from the car and hooks at the end of the spur track for engaging the rings and stopping the car.

Cancelled Per B.

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7. In a dog racing amusement, the combination of a race course for the dogs, a rail track on one side of said course, an electric car operatively mounted to run upon said track, * to carry a lure or decoy, a covering for said track having an opening in the side toward the course, said covering being [supported provided with supporting upon]* posts, and lined on the inside with boards, and a bracket adjacent the roof for supporting said roof and the overhanging side toward the track.

Ref. A.

Per A.

Mass. extending around the race course

Ref. A. 8. In a dog racing amusement, ^ a track, a car mounted upon said track, a lure mounted upon at

" A. said car, a covering for said track having ^ one side with an opening, a truss rod or wire for supporting the roof and the overhanging side toward said opening, and a lining for said covering.

[Matter enclosed between rules erased in copy.]

(9) 321,612 10

[*Words and figures enclosed in brackets erased in copy.]

[fol. 239] 3336

In Testimony Whereof I have hereunto set my name in
a
the presence of *two* witnesses.

Owen P. Smith.

Witnesses: M. J. Paddon.

Oath

STATE OF ILLINOIS,
County of Cook, ss:

Owen P. Smith, the above named petitioner, being sworn, deposes and says: that he is a citizen of the United States, and resident at 704 South Kenneth Avenue in the City of Chicago, in the County of Cook and State of Illinois; that he verily believes himself to be the original, first and sole inventor of the improvement in Dog Racing Amusements described and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to this application, and that no application for patent on said improvement has been filed by him or his representatives or assigns in any country foreign to the United States.

Owen P. Smith.

Sworn to and subscribed before me this 27th day of August, 1919. Mary J. Paddon, Notary Public. My commission expires May 10, 1923. (Seal.)

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[fol. 240] 2-260

V, Paper No. 2

Div. 7, Room 312

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number date of filing, title of Invention, and name of the applicant.

Department of the Interior, United States Patent Office,
Washington

Oct. 3, 1919.

U. S. Patent Office, Oct. 3, 1919, Mailed.

Chester W. Brown, 160 N. Wells St., Chicago, Ill.:

Please find below a communication from the Examiner in charge of the application of O. P. Smith, filed Sept. 4, 1919, Dog Racing Amusements, Serial No. 321,612.

James T. Newton, Commissioner of Patents.

The drawings are informal in that they are pale and rough in parts. The drawings can be corrected and new drawings will not be admitted.

Page 3, line 6, the housing should be designated by a reference numeral and so referred to. Line 27, rod 8 does not run to bracket 6 but to the roof which should be designated by a reference numeral. Lines 32 and 33, "brackets 6" is objected to for reasons stated above.

Page 4, line [11]*, the motor should be designated by a reference numeral. Line 14, "front" should be rear. Line 21, "28" should be inserted after "wheel."

Page 5, line 13, reference numeral 49 should be shown on the drawing. Line 4 from the bottom, the disclosure of trip 60 is objected to as insufficient. A better disclosure is required.

Page 6, line 2, "55" is objected to, 55 has already been applied to notch in 54.

Claim 1 is rejected on Pinard, 362,396, May 3, 1887 (46-73).

[fol. 241] Claims 2 and 3 are rejected on Walsh, 611,876, Oct. 4, 1898 (46-73).

Claims 4, 5 and 6 are allowable.

Claim 7, cancel the comma in line 3. Line 6, the posts should be positively included. The claim is rejected as there is thought to be no patentable relation between the

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*[Erased in copy.]

devices as described in lines 1 to 4 and the covering as described in the rest of the claim.

Claim 8 is rejected on Moss (Brit.), 9058, Apr. 29, 1896 (1 sheet) (46-73).

C. G. Jarboe, Examiner.

Willis.

321612 13

Draftsman Div. 9/29/20.
Application Div. Sep. 24, 1920, U. S. Patent Office.
U. S. Patent Office Sep. 25, 1920, Division VII.

Associate Power of Attorney

Washington, D. C., June 25, 1920.

Hon. Commissioner of Patents.

SIR: Please recognize Geo. C. Shoemaker, of 918 F. Street Northwest, Washington, D. C., as my associate in the matter of the application of Owen P. Smith for an improvement in Dog Racing Amusements, filed September 4, 1919, Serial No. 321,612, Room No. 312.

Respectfully, Chester W. Brown.

(25-cent documentary stamp.)

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[fol. 242] Paper No. 4

Amendment A

5557

Application Div., Sep. 24, 1920, U. S. Patent Office.
U. S. Patent Office, Sep. 25, 1920, Division VII.

Division 7, Room 312

Owen P. Smith. Dog Racing Amusements. Serial No. 321,612. Filed September 4, 1919

Washington, D. C., September 22, 1920.

Honorable Commissioner of Patents.

SIR: In response to office letter of October 3, 1919, amendment is hereby made as follows:

Page 3, line 6, after "housing" insert —31a—
Same page, line 24, after "roof" insert —1a—

Same page, lines 27 and 28, strike out "end of the bracket 6" and insert —roof 1a—

Same page, line 32, strike out "brackets 6" and insert —roof 1a—

Same page, line 33, strike out "brackets 6" and insert —roof 1a—

Page 4, line 9, after "motor" insert —17—

Already. Same page, line 14, strike out "front" and insert —rear—

Same page, line 21, after "wheel" insert —28—

Page 6, line 2, after "off" insert

A[1]. The curved terminal portion of the bar 54 extends below the rest of the bracket mechanism and into the path of the projecting trip 60 so as to be engaged and lifted by the same. The curved terminal portion of the bar 54 presents a lower convex face to the trip and is lifted by the same sufficiently to cause the bar 54 to release the member 52 and

321612 15

[fol. 243] permit the brake mechanism to operate.

Same page, line 2, change "55" to —55a—

Claim 1, line 2, strike out "and" and insert a comma.

Same claim at the end of the last line change the period to a comma and insert

---

Per B

A[2]. —and means extending around the race course for concealing the mechanical conveyor.

Claim 2 at the end of the last line, change the period to a comma and insert:

A[3]. —and a housing extending around the race course and receiving and concealing the mechanical conveyor.

Per B

Claim 3, line 2, strike out "covered"

Same claim, last line, strike out "and"

Same claim at the end of the last line change the period to a comma and insert

Per B

A'. —and a casing extending around the race course and receiving and concealing the track and the conveyor car and provided with a longitudinal opening through which the said arm extends.

[Matter enclosed between rules erased in copy.]

Claim 7, line 3, strike out the comma.

Same claim, lines 5 and 6, strike out "supported upon" and insert —provided with supporting—

Claim 8, line 1, after "amusement" insert a comma and the words—a race course—

Same claim and line after "track" insert —extending around the race course—

Same claim, line 3, after "having" insert —at—

Remarks

The Chief Draftsman has been instructed to correct the drawing and also to apply the reference numerals to which attention has been called and an amount in accordance

321,612 16
5559

[fol. 244] with the oral estimate of the Chief Draftsman, has been paid into the Patent Office to cover the cost of the correction. The numeral 49, however, is shown applied in Figure 3 of the drawing at each end thereof and at the upper and lower portions of the same and it is thought that these are the only points where the said numerals would appear.

All the requirements of the examiner relative to the correction of the have been complied with.

The specification has also been amplified to set forth more fully the construction and operation of the trip and the coacting portion of the brake mechanism and it is thought that this construction will be thoroughly understood. The bar 54 is provided with a curved terminal portion extending below the brake mechanism and presenting a lower convex face to the projecting trip 60 which is adapted to lift the bar by engaging the said curved portion for releasing the

brake mechanism to permit an application of the brakes. It is hoped that further objection to the disclosure of the trip will be waived.

The Patent to Pinard No. 362396 shows a rope and a drum on which the rope is adapted to be wound for drawing the bait along a course. Claim 1 has been amended to include the means for concealing the mechanical conveyor and is believed to be clearly distinguished from the patent to Pinard as it would be impossible with this construction to conceal the mechanical conveyor, the drum and the rope without concealing the lure or bait.

The patent to Walsh No. 611876 shows the race course surrounded by track on which operates a motor device

[fol. 245] or car having projecting rods extending longitudinally in opposite directions and adapted to cooperate with a pair of race courses or race tracks. Claims 2 and 3, against which the Walsh patent was cited have been amended to include the housing extending around the track and concealing the mechanical conveyor. This element is not present in the Walsh patent.

Claim 7 has been amended as suggested.

Claim 8 has been amended to include the race course and to define the relation of the track to the race course. As neither the British patent cited nor the other reference disclosed applicant's housing extending around the race course and concealing the track and the car, it is thought that claim 8 which has been limited to this construction is fully distinguished from the art cited.

It is believed that the amendment should place the application in condition for favorable consideration.

Respectfully submitted.

Geo. C. Shoemaker, Attorney for Applicant.

Case reconsidered as amended Sept. 24, 1920.

Page 4, line 14, strike out "rear" and insert

[front]

Strike out claims 1, 2 and 3 and insert

Canceled per B

B 1. In a dog racing amusement, the combination of a race course suited for dogs, a mechanical conveyor for carrying a lure or quarry in advance of the dogs,

and a relatively fixed housing extending around the race course and receiving and concealing the mechanical conveyor.

2. In a dog racing amusement, a race course suited for dogs, a mechanical conveyor at one side of the race course, a lure carried by the mechanical conveyor and adapted to be maintained in advance of the racing dogs, and a casing extending around the race course at one side thereof and receiving and concealing the conveyor.

[Matter enclosed between rules erased in copy.]

[3. In a dog racing amusement, a race course suited for dogs, a casing extending around the outer side of the race course and provided with a longitudinal opening, a mechanical conveyor including a track extending around the race course and located within the casing, and a conveyor car mechanically operated upon said track and provided with an arm extending through the longitudinal opening of the [fol. 240] casing in a projecting position over the track and adapted to carry a lure, and a wheel rotatably mounted on and supporting the arm at the projecting end thereof.

321,612 21

Strike out claims 7 and 8.

Remarks.

The specification has been amended as suggested and the attention of the Examiner is called to Figure 3 of the drawing in which the arms 48 are shown in an inclined position. The leader lines of the numerals 49 extend to apertures and the outer walls of the apertures are shown in this Figure at each end of the car. It is thought that this is a sufficient showing and it is hoped that further illustration thereof will not be required. The construction, it is believed, may be clearly understood from Figures 3 and 4.

Claims 1 to 3 inclusive, have been drawn to present a fair copy and to define clearly the arrangement of the cas-

ing around the race track. Applicant is unable to find such a casing in the British patent to Moss and the Examiner is respectfully requested to apply the references to the extent of pointing out where this housing is shown. The part 15 in the British patent, is the artificial rabbet and by reference to the specification and drawings, the track is apparently exposed centrally of the race course. With this construction it is not clear how the housing of the character employed by applicant could be used in the Moss patent. If Moss fails to show this casing or housing, claims 1 to 3 inclusive are not met in terms or in substance and are entitled to a favorable consideration.

Claims 7 and 8 have been canceled in view of the requirement for division.

Respectfully submitted.

Geo. C. Shoemaker, Attorney for Applicant.

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[fol. 250] 2-260

V, Paper No. 8

Div. 7, Room 312

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number date of filing, title of Invention, and name of the applicant.

Department of the Interior, United States Patent Office, Washington

Feb. 28, 1921.

U. S. Patent Office, Feb. 23, 1921, Mailed.

Geo. C. Shoemaker, McGill Bldg., Washington, D. C.:

Please find below a commnuication from the Examiner in charge of the application of O. P. Smith, filed Sept. 4, 1919, Dog Racing Amusement Serial No. 321,612.

M. H. Coulston, [R. F. Whitehead,]* Acting Commissioner of Patents.

[* Erased in copy.]

Case reconsidered as amended Nov. 10, 1920.

Claims 1 and 2 are again rejected on Moss. The housing of Moss is member 28.

The remaining claims appear allowable.

C. G. Jarboe, Examiner.

E. J. E. W. J. W.

321,612 23

[fol. 251] Paper No. 9

Amendment C

Application Div., Mar. 14, 1921, U. S. Patent Office.
U. S. Patent Office, Mar. 15, 1921, Division VII.

Div. 7, Room 312

Owen P. Smith. Dog Racing Amusement. Filed September 4, 1919. Serial No. 321,612

Washington, D. C., March 12, 1921.

Honorable Commissioner of Patents.

Sir: Responsive to office letter of February 28, 1921, amendment is hereby made as follows:

C. Strike out claims 1 and 2, and adjust the numerals of the remaining claims.

Remarks

The rejected claims have been cancelled and it is hoped that the case will be passed to issue at an early day.

Respectfully submitted.

Geo. C. Shoemaker, Attorney for Applicant.

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[fol. 252] Div. 7, V

Serial No. 321,612

Address only the Commissioner of Patents, Washington, D. C.

[Marginal notes:] In remitting the final fee give the serial number at the head of this notice. Uncertified checks will not be accepted.

Department of the Interior, United States Patent Office, Washington

March 17, 1921.

Owen P. Smith.

SIR: Your application for a patent for an improvement in Dog Racing Amusement, filed Sept. 4, 1919, has been examined and allowed.

The final fee, twenty dollars, must be paid not later than six months from the date of this present notice of allowance. If the final fee be not paid within that period, the patent on this application will be withheld, unless renewed with an additional fee of $15, under the provisions of section 4897, Revised Statutes.

The office delivers patents upon the day of their date, and on which their term begins to run. The printing, photolithographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will require about four weeks, and such work will not be undertaken until after payment of the necessary fee.

When you send the final fee you will also send, distinctly and plainly written, the name of the inventor, title of invention, and serial number as above given, date of allowance (which is the date of this circular), date of filing, and, if assigned, the names of the assignees.

If you desire to have the patent issue to assignees, an assignment containing a request to that effect, together with the fee for recording the same, must be filed in this office on or before the date of payment of final fee.

After issue of the patent uncertified copies of the drawings and specifications may be purchased at the price of ten cents each. The money should accompany the order. Postage stamps will not be received.

Final fees will not be received from other than the ap- [fol. 253] plicant, his assignee or attorney, or a party in interest as shown by the records of the Patent Office.

Respectfully, M. H. Coulston, [R. F. Whitehead,]*
Commissioner of Patents.

[* Erased in copy.]

Geo. C. Shoemaker, McGill Bldg., Washington, D. C.

321,612 25

$20 Rec'd Apr. 26, 1921. C. C. U. S. Patent Office

Memorandum of Fee Paid at United States Patent Office

(Be careful to give correct Serial No.)

Serial No. 321,612. —— —, 19—.
Inventor: Owen P. Smith.
Patent to be issued to: As per record.
Name of invention as allowed: Dog Racing Amusement.
Date of Payment: April 26, 1921.
Fee: $20.00.
Date of filing: Sept. 4, 1919.
Date of circular of allowance: March 17, 1921.

The Commissioner of Patents will please apply the accompanying fee as indicated above.

Geo. C. Shoemaker, Attorney.

[Send patent to Geo. C. Shoemaker, McGill Bldg., Wash. D. C.]*

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[fol. 254] 2-254

Div. 7, Room 312

V, Paper No. 10

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number, date of filing, title of invention, and name of the applicant.

Examiner's Amendment

Department of the Interior, United States Patent Office, Washington

May 14, 1921.

Geo. C. Shoemaker, McGill Bldg., Washington, D. C.:

Please find below a communication from the Examiner in charge of the application of O. P. Smith, filed Sept. 4, 1919, Dog Racing Amusement Serial No. 321,612.

Thomas E. Robertson, [R. F. Whitehead,]* Commissioner of Patents.

[* Erased in copy.]

In accordance with the provisions of Order No. 2308, dated March 12, 1917, which reads in part as follows:

* * * * * * *

Obvious informalities in the application may be corrected by the examiner, but said correction must be in the form of an amendment, approved by the Principal Examiner in writing, placed in the file, and made a part of the record. The changes specified in the amendment will be entered by the clerk in the regular way.

* * * * * * *

the changes, hereinafter specified, are made by the examiner in the application above identified.

Should these changes not be satisfactory to the applicant, appropriate amendment may be proposed under the provisions of Rule 78, provided the specification has not been printed.

The application has been amended as follows:

Page 4, line 20, change "near" to Near.

C. G. Jarboe, Examiner.

W. J. W.

321,612 27

[fol. 255] #11

Mail Room, U. S. Patent Office, Aug. 7, 1926.

United States District Court, Northern District of Ohio
(Eastern Division)

Honorable Commissioner of Patents, Washington, D. C.

Sir: In compliance with the Act of February 18, 1922
42
[41]* Stat. L. —), you are advised that there was filed on the 5th day of August, 1926, in this court an action, suit, or proceeding No. 1982, entitled Name: Owen P. Smith, Plaintiff, Address: Miami, Florida, versus Name: W. N. Stein-

[*Erased in copy.]

man et al., Partners, etc., Defendant, Address: 204 Medford Bldg., 21 Main St., brought upon the following patents:

	Patent No.	Date of patent.	Patentee.
1	1,038,504	Sep. 10, 1912	Owen P. Smith
2	1,379,224	May 24, 1921	do.
3	1,410,842	Mch. 28, 1922	do.
4	1,507,439	Sep. 2, 1924	do.
5	1,507,440	Sep. 2, 1924	do.
6	1,591,569	July 6, 1926	do.

In the above-entitled case, on the ... day of ....., 192 , the following patents have been included by ..... (insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of patent.	Patentee.
1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....
5	.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued: ——.

In witness whereof I have affixed my hand this 5th day of August, 1926, at Cleveland, Ohio.

B. C. Miller, Clerk of said Court, by C. A. Wilder, Deputy Clerk.

321,612 28

[fol. 256] #12

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO

Honorable Commissioner of Patents, Washington, D. C.

SIR: In compliance with the Act of February 18, 1922 42
[41]* Stat. L. —), you are advised that there was filed on the 30th day of September, 1926, in this court an action, suit, or proceeding No. 464, entitled Name: Owen P. Smith, Plain-

[*Erased in copy.]

tiff, Address: Miami, Dade County, Florida, versus Name Franklin Kennel Club, Limited, Edward H. McGrath, Thomas H. Buxton, Edward Seifert, William B. Wheeland, Reinhart Wilke, and Robert Dienst, Defendants. Address Grove City, Franklin County, Ohio. brought upon the following patents:

	Patent No.	Date of patent.	Patentee.
1	1,038,504	Sept. 10, 1912	Owen P. Smith.
2	1,379,224	May 24, 1921	Owen P. Smith.
3	1,410,842	March 28, 1922	Owen P. Smith.
4	1,507,439	Sept. 2, 1924	Owen P. Smith.
5	1,507,440	Sept. 2, 1924	Owen P. Smith.
6	1,591,569	July 6, 1926	Owen P. Smith.

In the above-entitled case, on the — day of ——, 192—, the following patents have been included by — (insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of patent.	Patentee.
1			
2			
3			
4			
5			

In the above-entitled case the following decision has been rendered or decree issued: ——.

In witness whereof I have affixed my hand this 4th day of October, 1926, at Columbus, Ohio.

Harry F. Rabe, Clerk of said Court.

321,612 29

[fol. 257] #13

Mail room, U. S. Patent Office, Dec. 4, 1926.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA

Honorable Commissioner of Patents, Washington, D. C.

SIR: In compliance with the Act of February 18, 1922 42
([41]* Stat. L. —), you are advised that there was filed on

[*Erased in copy.]

the 1st day of December, 1926, in this court an action, suit, or proceeding No. 18,596, entitled Name: Owen P. Smith, Plaintiff, Address: Miami, Florida, versus Name: American Electric Rabbit Racing Assn., Inc., et als., Defendant, Address: New Orleans, La., brought upon the following patents:

	Patent No.	Date of patent.	Patentee.
1	1038504	Sept. 10, 1912	Owen P. Smith.
2	1379224	May 24, 1921	do.
3	1410842	March 28, 1922	do.
4	1507439	Sept. 2, 1924	do.
5	1507440	Sept. 2, 1924	do.
6	1591569	July 6, 1926	do.

In the above-entitled case, on the — day of ——, 192—, the following patents have been included by — (insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of patent.	Patentee.
1			
2			
3			
4			
5			

In the above-entitled case the following decision has been rendered or decree issued: ——.

In witness whereof I have affixed my hand this 2nd day of December, 1926, at New Orleans, La.

H. J. Carter, Clerk of said Court.

321,612 30

[fol. 258] #14

Mail room, U. S. Patent Office, Jan. 15, 1927.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA

Honorable Commissioner of Patents, Washington, D. C.

SIR: In compliance with the Act of February 18, 1922 42
([41]* Stat. L. —), you are advised that there was filed on

[*Erased in copy.]

the 12th day of January, 1927, in this court an action, suit, or proceeding No. 18,651, entitled: Name: Owen P. Smith, Plaintiff, Address: Miami, Dade County, Florida, versus Name: Louisiana Greyhound Club, Incorporated, et als., Defendants, Address: Jefferson Parish, Louisiana, brought upon the following patents:

	Patent No.	Date of patent.	Patentee.
1	1,038,504	Sept. 10, 1912	Owen P. Smith.
2	1,379,224	May 24, 1921	do.
3	1,410,842	Mar. 28, 1922	do.
4	1,507,439	Sept. 2, 1924	do.
5	1,507,440	Sept. 2, 1924	do.
6	1,591,569	July 6, 1926	do.

In the above-entitled case, on the — day of ——, 192—, the following patents have been included by —— (insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of patent.	Patentee.
1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....
5	.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued: ——.

In witness whereof I have affixed my hand this 13th day of January, 1927, at New Orleans, Louisiana.

H. J. Carter, Clerk of said Court. (Seal.)

321,612 31

[fol. 259] #15

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

Honorable Commissioner of Patents, Washington, D. C.

SIR: In compliance with the Act of February 18, 1922 42
([41] * Stat. L. —), you are advised that there was filed on

[*Erased in copy.]

the 8th day of June, 1927, in this court an action, suit, or proceeding No. 7164, entitled Name: Hannah M. Smith, etc., Plaintiff, Address: Dade County, Florida, versus Name: Ogden Kennel Club, et al., Defendant, Address: Chicago, Illinois, brought upon the following patents:

	Patent No.	Date of patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith.
2	1,379,224	May 24, 1921	Owen P. Smith.
3	1,410,842	Mar. 28, 1922	Owen P. Smith.
4	1,507,439	Sept. 2, 1924	Owen P. Smith.
5	1,507,440	Sept. 2, 1924	Owen P. Smith.
	1,591,569	July 6, 1926	Owen P. Smith.

In the above-entitled case, on the — day of ——, 192 , the following patents have been included by — (insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of patent.	Patentee.
1			
2			
3			
4			
5			

In the above-entitled case the following decision has been rendered or decree issued:——

In witness whereof I have affixed my hand this 12th day of July, A. D. 1927, at Chicago, Illinois.

Charles M. Bates, Clerk of said Court. (Seal.)

321,612 32

[fol. 260] #16

Mail room, U. S. Patent Office, Jul. 14, 1927.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

Honorable Commissioner of Patents, Washington, D. C.

SIR: In compliance with the Act of February 18, 1922 42
([41]* Stat. L. —), you are advised that there was filed on

[*Erased in copy.]

the 8th day of June, 1927, in this court an action, suit or proceeding No. 7165, entitled Name: Hannah M. Smith, etc., Plaintiff, Address: Dade County, Florida, versus Name: Edward H. Wait, et al., Defendant Address: Chicago, Illinois, brought upon the following patents:

	Patent No.	Date of patent	Patentee
1	1,038,504	Sept. 10, 1912	Owen P. Smith.
2	1,379,224	May 24, 1921	Owen P. Smith.
3	1,410,842	Mar. 28, 1922	Owen P. Smith.
4	1,507,439	Sept. 2, 1924	Owen P. Smith.
5	1,507,440	Sept. 2, 1924	Owen P. Smith.
	1,591,569	July 6, 1926	Owen P. Smith.

In the above-entitled case, on the — day of ——, 192-, the following patents have been included by — (insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of patent	Patentee.
1			
2			
3			
4			
5			

In the above-entitled case the following decision has been rendered or decree issued:——

In witness whereof I have affixed my hand this 12th day of July, A. D., 1927, at Chicago, Illinois.

Charles M. Bates, Clerk of said Court. (Seal.)

321,613 33

[fol. 261] #17

Mail room, Jul. 23, 1927, U. S. Patent Office.

District Court of the United States, Southern District of Illinois

Honorable Commissioner of Patents, Washington, D. C.

Sir: In compliance with the Act of February 18, 1922 (42 Stat. L. 392), you are advised that there was filed on the 21st day of July, 1927, in this court an action, suit, or

proceeding No. 616, entitled Name: Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, Plaintiff, Address: Miami, Florida, versus Name: Peoria Kennel Club, a Corporation of Illinois, et al., Defendants, Address: Peoria, Illinois brought upon the following patents:

	Patent No.	Date of patent.	Patentee.
1	1,038,504	Sept. 10, 1912	Owen P. Smith.
2	1,379,224	May 24, 1921	Owen P. Smith.
3	1,410,842	Mch. 28, 1922	Owen P. Smith.
	1,507,439	Sept. 2, 1924	Owen P. Smith.
4	1,507,440	Sept. 2, 1924	Owen P. Smith.
	1,591,569	July 6, 1926	Owen P. Smith.
5	1,630,811	May 31, 1927	Owen P. Smith.
	1,630,812	May 31, 1927	Owen P. Smith.

In the above entitled case, on the 21st day of July, 1927, the following patents have been included by — (insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of patent.	Patentee.
1			
2			
3			
4			
5			

In the above-entitled case the following decision has been rendered or decree issued:——

In witness whereof I have affixed my hand this 26th day of July, 1927, at Peoria, Illinois.

S. T. Burnett, Clerk of said Court.

321,612 34

[fol. 262] =18

Mail room, Aug. 29, 1927, U. S. Patent Office.

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO

Honorable Commissioner of Patents, Washington, D. C.

SIR: In compliance with the Act of February 18, 1922 42
([41] * Stat. L.—), you are advised that there was filed on

[*Erased in copy.]

the 19th day of August, 1927, in this court an action, suit, or proceeding, No. 485, Eq., entitled Name: Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, Plaintiff, Address: County of Dade, Florida, versus Name: Springdale Amusement Park, Limited, et al., Defendant, Address: Near the City of Hamilton, Ohio, brought upon the following patents:

	Patent No.	Date of patent.	Patentee.
1	1,038,504	Sept. 10th, 1912	Owen P. Smith.
2	1,379,224	May 24, 1921	Owen P. Smith.
3	1,410,842	March 28, 1922	Owen P. Smith.
4	1,507,439	Sept. 2, 1924	Owen P. Smith.
	1,507,440	Sept. 2, 1924	Owen P. Smith.
5	1,591,569	July 6, 1926	Owen P. Smith.
	1,630,811	May 31, 1927	Owen P. Smith.
	1,630,812	May 31, 1927	Owen P. Smith.

In the above-entitled case, on the — day of ——, 192-, the following patents have been included by — (insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of patent.	Patentee.
1			
2			
3			
4			
5			

In the above-entitled case the following decision has been rendered or decree issued:——

In witness whereof I have affixed my hand this 19th day of August, 1927, at Cincinnati, Ohio.

Harry F. Rabe, Clerk of said Court, by T. V. Lamb, Deputy.

[fol. 263] 321,612 35

=19

Mail room, Oct. 3, 1927, U. S. Patent Office.

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

Honorable Commissioner of Patents, Washington, D. C.

SIR: In compliance with the Act of February 18, 1922

([41]* Stat. L. 392), you are advised that there was filed on the 29th day of September, 1927, in this court an appeal from the Eastern District of Missouri, No. 7914, entitled Name: Ramona Kennel Club, Incorporated, C. R. Fitzgerald, David Murphy, John Schaughnessy, Morris Multin, Harry Levin, Leo Shea, Anthony Foley, Herman Tegethoff, Aaron Levin, Cornelius J. O'Brien, William Molesky, Abe Cooperman, Edward F. Gleason and Arthur H. Daily, Appellants, Address: St. Louis Missouri, versus Name: Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, Appellee, Address: Dade County, Florida, brought upon the following patents:

	Patent No.	Date of patent.	Patentee.
1	1,038,504	Sept. 10, 1912	Owen P. Smith.
2	1,379,224	May 24, 1921	Owen P. Smith.
3	1,410,842	March 28, 1922	Owen P. Smith.
4	1,507,439	Sept. 2, 1924	Owen P. Smith.
5	1,507,440	Sept. 2, 1924	Owen P. Smith.
6	1,591,569	July 6, 1926	Owen P. Smith.

In the above-entitled case, on the — day of ——, 192-, the following patents have been included by — (insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of patent.	Patentee.
1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....
5	.....	.....	.....

In the above-entitled case the following decision has been rendered or decree issued: ——.

In witness whereof I have affixed my hand this first day of October, 1927, at St. Louis, Missouri.

E. E. Koch, Clerk of said Court.

321,612 36

[*Erased in Copy.]

[fol. 264] #20

Mail room, 11, 1927, U. S. Patent Office.

District Court of the United States, Northern District of Oklahoma

Honorable Commissioner of Patents, Washington, D. C.

Sir: In compliance with the Act of February 18, 1922 (42 Stat. L. 392), you are advised that there was filed on the 16th day of September, 1927, in this court an action, suit or proceeding, No. 271, Eq., entitled Name: Hannah M. Smith, Admx. estate Owen P. Smith, Plaintiff, Address: ——, versus Name: Magic City Kennel Club, Inc., et al., Defendant-, Address: ——, brought upon the following patents:

	Patent No.	Date of patent.	Patentee.
1	1379224	5-24-21	Owen P. Smith.
2	1507439	9- 2-24	Owen P. Smith.
3	1507440	9- 2-24	Owen P. Smith.
4	1630811	5-31-27	Owen P. Smith.
5	1630812	5-31-27	Owen P. Smith.

In the above-entitled case, on the — day of ——, 192-, the following patents have been included by — (insert amendment, answer, cross bill, or other pleading):

	Patent No.	Date of patent.	Patentee.
1			
2			
3			
4			
5			

In the above-entitled case the following decision has been rendered or decree issued: ——.

In witness whereof I have affixed my hand this 9th day of November, 1927, at Tulsa, Okla.

H. P. Warfield, Clerk, by H. W. James, Deputy, Clerk of said Court.

321,612 37

[fol. 265] [Clerk's Note.—Copy of drawings and specifications of letters patent with file wrapper omitted as are

same as in plaintiff's Exhibit 2—Smith patent No. 1,379,224—appearing at page 157.]

2-421

1919

Contents

1. Application, — papers.
2. Rej., Oct. 3, 1919.
3. Assn. P. of A., Sep. 24, 1920.
4. Amendment A, Sep. 24, 1920.
5. Letter to office, Sept. 29, 1920.
6. Rej., Oct. 21, 1920.
7. Amendment B, Nov. 10, 1920.
8. Rej., Feby. 8, 1921.
9. Amendment C., Mar. 14, 1921.
10. Amendment D, May 14, 1921.
11. Notice of suit, Aug. 7, 1926.
12. Notice of suit, Oct. 5, 1926.
13. Notice of suit, Dec. 4, 1926.
14. Notice of suit, Jan. 15, 1927.
15. Notice of suit, July 14, 1927.
16. Notice of suit, July 14, 1927.
17. Notice of suit, July 28, 1927.
18. Notice of suit, Aug. 20, 1927.
19. Notice of C. C. of Appeals, Oct. 3, 1927.
20. Notice of suit, Nov. 11, 1927.

321,612 38

[fol. 266] DEFENDANTS's EXHIBIT No. 6

390

Department of Commerce, United States Patent Office

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents in the matter of the Letters Patent of Owen P. Smith, Num-

Number (Series of 1913)
472,321

(EXR'S BOOK) 16

DIV. 34 7

PATENT No. 1507440

Name Owen J. Smith,

SEP 2 1924

of Chicago

County of

State of Illinois

Invention Housing for Conveyor Cars and Tracks

	ORIGINAL	RENEWED
Petition	May 16, 1921	, 192
Affidavit	" 16, 1921	, 192
Specification	" 16, 1921	, 192
Drawing	" 24, 1921	, 192
Photo Copy	, 192	, 192
First Fee Cash	$15 May 16, 1921	, 192
" " Cert.	, 192	, 192
Appl. filed complete	May 24, 1921	, 192
Ent. Issue and Date for Issue	July 2, 1924	, 192
Exr. Div.	7	For Div.
Notice of Allowance	July 3, 1924	, 192
Final Fee Cash	$20 Aug 7, 1924	, 192
" " Cert.	, 192	, 192
Patented	SEP 2 1924	, 192

PARTS OF APPLICATION FILED

Division of Appn. No.

Attorney Chester W. Brown, 514 W. Van Buren Street Chicago, Ill.

Associate Attorney Geo. C. Shoemaker, 509-515 McGill Bldg 908 G St. N.W. Cash

No. of Claims Allowed 3 Print Claim 1 in O. G. O.G. 46-73

Date of Allowance Housing for Conveyor Cars and Tracks

ber 1,507,440, granted September 2, 1924, for Improvement in Housings for Conveyer Cars and Tracks.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this seventh day of January in the year of our Lord, one thousand nine hundred and twenty-eight and of the Independence of the United States of America the one hundred and fifty-second.

Thomas E. Robertson, Commissioner of Patents.

Attest: D. E. Wilson, Chief of Division. (Seal.)

(Here follows file-wrapper, patent No. 1,507,440, side folios 267-268)

[fol. 269] $15 Rec'd May 16, 1921. C. C. U. S. Patent Office.

Telephone: Harrison 7441

Patents. Experimenting Work. Models

Chester W. Brown & Co., Patent Attorneys, 514 W. Van Buren St., Chicago

May 13th, 1921.

Commissioner of Patents, Washington, D. C.

Sir: Herewith we hand you application papers for Patent for Owen P. Smith, for Housing for Conveyor Cars and Tracks, together with Fifteen Dollars for first Government Fees.

The drawings accompany under separate cover.

Resp'y, Chester W. Brown.

472,312 1

[fol. 270] 472,312

Mail room, May 16, 1921, U. S. Patent Office.

Petition, with Power of Attorney

To the Commissioner of Patents: 11711

Your petitioner, Owen P. Smith, a citizen of the United States and a resident of the City of Chicago, in the County

of Cook and State of Illinois, and whose Post Office Address is at No. 514 W. Van Buren Street in said City, prays that Letters Patent may be granted to him for the improvements in Housing for Conveyor Cars and Track
440 set forth in the annexed specification.

And he hereby appoints Mr. Chester W. Brown of No. 514 W. Van Buren Street in said City of Chicago, State of Illinois, his attorney, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Signed at the City of Chicago, County of Cook and State of Illinois, this 3rd day of May, 1921.

Owen P. Smith.

(25-cent documentary stamp.)

[Specification]*

To all whom it may concern:

Be it known that I, Owen P. Smith, a citizen of the United States, residing at the City of Chicago, in the County of Cook and State of Illinois, have invented certain new
s
and useful improvements in Housing for Conveyer Cars and Tracks, of which the following is a specification:

473,312 2

[fol. 271] 11712

My invention relates to means for concealing the track and conveyor car in a mechanical lure conveyor for dog racing courses.

The object of the present invention is to provide a suitable housing for concealing the track and conveyor car from the dogs, and which shall form a continuous housing around the race course, with a continuous open- upon the side toward the course.

Another object is to provide suitable means for supporting the side of the housing toward the track above the opening in said housing.

[*Erased in copy.]

With the foregoing, and other objects in view, my invention consists of the arrangement and combination of parts as hereinafter described and claimed; and while the invention is not restricted to the exact details of the construction disclosed herein, yet, for the purposes of illustrating a particular embodyment thereof, reference is had to the accompanying drawings in which like reference characters designate the same parts in the several views, and in which,

Figure 1 is a plan view of a dog racing course having my improved housing arranged thereabout.

Figure 2 is a sectional view of the housing taken along the line 3—3 in figure 1.

In the accompanying drawings, 1 represents a race course suitable for dogs to race upon, having my improved housing 2 installed around the outer circumference thereof. At 19 I have provided a siding and switch suitable for switching the car upon the side track and to the tower and den thereunder 20.

In the installation of my said housing, there is preferably made a slight excavation below the ground line

472,312 3

[fol. 272] 11713

3. Posts as 4 and 5 are set into the ground at suitable distances apart around the entire course, and these are connected together by the cross ties 7, 7, and the timbers 6, 6. The posts 5, 5 extend slightly above the ground line, while the posts 4, 4 extend above the topmost part of the housing. Rails to form a track as 15, 15 are laid upon the cross ties, and a suitable conductor as 9 also provided for the car. To form the frame

N S.

o

work of the inner side and roof, I emplay the timbers 8 and 10 respectively, and excepting for a continuous opening 14 on the side toward the race course, the entire interior of the frame work is lined with boards as 11. For supporting the inner edge of the roof, and the inner side of the housing above the opening 14, I have provided truss rods as 12, having one end attached to the upper portion of the posts 4 above the roof, and the other end attached to the upper portion of the timbers 8, with a turn-

Per A.

buckle in between said ends to provide means for adjustment to keep the roof always at the desired elevation.

At 16 I have shown a conveyer car upon said rail track, with an arm 17 extending outwardly toward the middle of

18

22. the race course, with a traction wheel [21]* at the end thereof resting upon the ground. At 22 I have provided the door shown in the side of the housing, which is provided with any suitable catch and release (not shown) for holding said door open during the race, and closing it when the car has passed through it going upon the side track to the den.

In the foregoing construction, it will be seen that the entire track, and conveyer car are concealed from the dogs, the only portions being exposed to view are the arm and parts mounted thereon. When the race is finished, the car is switched upon the siding, and passes through the door 22, which is closed to conceal the entire equipment.

472,312 4

[fol. 273] 11714

Having thus described my invention, what I claim and desire to secure by Letters Patent, is the following:

Sub. A¹ Cl¹

1st. In a covering for concealing a conveyor car and rail track, the combination of a frame work of timbers covered with boards at the sides and above said track and a continuous opening formed in one side of the covering.

2nd. In a housing conveyor cars and tracks, the combination of posts at the sides, timbers above and on the inside, boards upon said posts and timbers, a continuous opening in one side, and truss rods for supporting the side and roof above said opening.

having a member 17

3rd. In a housing to cover a track and conveyor car, ∧ the combination of posts, timbers connected to said posts to form a frame, boards enclosing said housing, a continuous

for member 17

opening ∧ along one side of said housing and means for supporting the side and roof above said opening.

[*Erased in copy.]

4th. In a housing for covering conveyor cars and tracks, the combination of posts, timbers attached to said posts to form a frame, a continuous opening on one side of said housing, truss rods for supporting the side above said opening and a door for concealing the conveyor car.

[Matter enclosed between rules erased in copy.]

See Fickinger, 1,125,283, Jan. 19, 1915, 104-176.

472,312 5

[fol. 274] 11715

In testimony whereof, I have hereunto set my hand in the presence of two subscribing witnesses.

Owen P. Smith.

In presence of Chester W. Brown, Richard Green.

Oath

STATE OF ILLINOIS,
County of Cook, ss:

Owen P. Smith, the above named petitioner, being sworn, deposes and says; that he is a citizen of the United States, and resident at 514 W. Van Buren Street, in the City of Chicago, in the County of Cook and State of Illinois; that he verily believes himself to be the original, first and sole inventor of the improvement in Housing for Conveyor Cars described and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to this application; and that no application for patent on said improvement has been filed by him or his representatives or assigns in any country foreign to the United States.

Owen P. Smith.

Sworn to and subscribed before me this 13th day of May, 1921. Charles H. Knight, Notary Public. My commission expires July 2nd, 192-. (Seal.)

472,312 6

[fol. 275] WMN

2-179

Address only the Commissioner of Patents, Washington, D. C.

Department of the Interior, United States Patent Office, Washington

May 20th, 1921.

SIR: I have to acknowledge the receipt of your incomplete application for patent, the title of which is improvement in housing for conveyor cars and track, filed* May 16, 1921, accompanied by Petition, Affidavit, Specification, Informal Drawing, First fee of $15.

This application is informal for the reason that the proper drawing is required to complete the same.

You are advised that a drawing, illustrating two figures, accompanied this application, but apparently does not belong with same, and for this reason you are requested to advise the Office as to what disposition you wish made of the improper drawing.

Very respectfully, T. E. Robertson, R. F. Whitehead, Commissioner of Patents.

Owen P. Smith, Chester W. Brown, 514 W. Van Buren Street, Chicago, Ill.

472,312 7

[fol. 276] 2-260

U. S. Patent Office, Feb. 28 1922, Mailed.

V, Paper No. 2

Div. 7 Room 312

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

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*This informal application must be completed within one year from the filing date above mentioned.

All communications respecting this application should give the serial number, date of filing, title of Invention, and name of the applicant.

Department of the Interior, United States Patent Office, Washington

Feb. 28, 1922.

Chester W. Brown, 514 W. Van Buren St., Chicago, Ill.:

Please find below a communication from the Examiner in charge of the application of O. P. Smith, filed May 24, 1921, Housing for Conveyor Cars and Tracks, Serial No. 472,312.

Thomas E. Robertson, Commissioner of Patents.

The drawing has been admitted for examination only, the lines are rough and blurred and the paper is mutilated. A new drawing is required.

Page 3, line 7, the "conductor 9" is not shown in the drawings, line 9, "employ" is misspelled, line 22, reference character "21" should probably be 18.

The claims are rejected as indefinite and as aggregations. The same objections occur in each claim and taking claim 3 as an example: the opening in the side of the housing has been claimed positively. "A continuous opening" cannot be made a positive element of a claim, an opening is intangible and in the present claim the housing should be described as "having" or "provided with a continuous opening in one side of said housing."

In support of the above requirement applicant's attention is directed to Ex Parte Davin, 1902 C. D. 251; 100 O. G. 452.

Further, no relation exists in the claim between the various parts nor has the relative location of the parts

472,312 8

[fol. 277]

#2

Serial No. 472312

been defined. The claim fails to state the functional dependence between the car and the side of the housing having the continuous opening. It is suggested that in line 2, after "car" the phrase having a laterally extending

arm be inserted. Line 4 should be amended to describe the side having the continuous opening as having such opening for the laterally extending arm.

The claims, if amended as required above, would probably be allowable in view of the present state of the art.

C. G. Jarboe, Examiner.

E.

[fol. 278] #3 472,312 9

11716

Amendment A

Mail room, Jul. 18, 1922, U. S. Patent Office.
U. S. Patent Office, Jul. 20, 1922, Division VII.

Division 7, Room 312

Application O. P. Smith. Filed May 24, 1921. Housing for Conveyor Cars and Tracks. Serial No. 472312

Chicago, July 15th, 1922.

Commissioner of Patents:

In response to the Examiners Letter of Feby. 28, 1922, in the above application,

Ex. see lett. "c"

1st. Amend the drawing by showing a "third" rail, (if same is not now shown) parallel with rails 15, 15, and midway between them, and number such rail as "conductor 9."

2nd. At middle of line 9 page 3 correct spelling of word "employ" appearing therein.

3rd. At line 22 page 3, correct reference character "21" to read "18."

4th. Strike out the claims, and insert in lieu thereof the following.

Canceled per B.

A¹. 1. A continuous covering for rail tracks and the like, supported upon posts set in the ground at either

side of said track, and formed by timbers attached to said posts, and boards attached to said timbers and posts to form a continuous covering, having a continuous opening in one side thereof, substantially as shown and for the purposes described.

[Matter enclosed between rules erased in copy.]

[2.] In a housing for covering tracks and cars having laterally extending arm operated upon said track, the combination of posts set in the ground at the sides of said track, timbers attached to said posts to form a frame, and boards attached to said enclosure
A'. timbers and posts to form a continuous ∧ above said track, and having a continuous opening in one side of said housing adapted to permit extension of the laterally extending arm there through, and truss rods attached to the closed side of the housing adapted to support the side of said housing above the said continuous opening.

473,312 10

Add B'>, cls. 2 & 3.

[fol. 279] Canceled per B. 11717

---

3. In a housing to cover a track and conveyor car having a laterally extending arm, the combination of posts set in the ground at either side of said track to support a frame work, timbers attached to said posts to form a frame, boards attached to said timbers and frame to form a continuous housing having a continuous opening therein, provided to permit operation of the laterally extending arm aforesaid and means for supporting the roof and side of the housing above said continuous opening aforesaid.

4. In a continuous housing for concealing a rail track and conveyor car having a laterally extending arm, and operated upon said track, the combination of suitable posts upon either side of said tracks, timbers attached to said posts fo form a frame and boards attached to said frame to form a continuous covering above and on both sides of

said track and having a continuous opening in one side through which the laterally extending arm mounted upon the car may pass, and a door at a suitable place in the side of said housing to permit said arm, and any object mounted thereon to pass therethrough.

[Matter enclosed between rules erased in copy.]

Remarks

In the foregoing amendment, applicant has endeavored to correct the objections pointed out by the Examiner, and it is thought that the present claims are allowable.

Applicant has ordered copy of present drawing, and will have new drawing prepared and filed before final allowance of the application, in compliance with requirement of examiner.

Respectfully submitted.

Chester W. Brown, Attorney for Applicant.

472,312 11

[fol. 280] #4

Mail room, Jul. 18, 1922, U. S. Patent Office.

Div. 7, Room 312

Application O. P. Smith. Filed May 24, 1921. Housing for Conveyor Cars and Tracks. Serial No. 472,312

Amdt. to Ex.

Chicago, Ill., July 15, 1922.

Chief Draftsman, Patent Office, Washington, D. C.

Sir: In the above application, will you kindly correct drawing to show the "third Rail Conductor" midway between the rails 15, 15, in the drawings, and number such third rail conductor as "9- on the drawing, as required by the examiner.

Upon receipt of your estimate of cost of above correction I will be pleased to remit the amount required.

Respectfully, Chester W. Brown, Attorney for Applicant.

OK. G. K. E.

472312 12

[fol. 281] 2-211

#5

Letter to Office

Draftsman's Division.

Address only the Commissioner of Patents, Washington, D. C.

$1.15 Rec'd Aug. 25, 1922. C. C. U. S. Pat. Office.

Department of the Interior, United States Patent Office, Washington, D. C.

July 28, 1922.

SIR: Referring to your order dated July 15, 1922, for correction of drawing in the application of Owen P. Smith, Div. 7, Serial No. 472312 filed May 24, 1921 you are advised that the cost of correcting the drawing in this application will be $1.15.

When corrections are made, prints of the corrected sheets should be ordered, cost 15c each, to ascertain whether the changes made are correct.

By direction of the Commissioner.

Very respectfully, Wm. J. Wyman, Chief Clerk, per D. W. E.

Chester W. Brown, 514 W. Van Buren St., Chicago, Ill.

Letter No. 131,998. 472,312 13

[fol. 282] [CLERK'S NOTE.—Drawing appearing as sheet 14 of this file wrapper is omitted as it is same as drawing in plaintiff's Exhibit 3—Smith Patent No. 1,507,440—appearing at page 167.]

2-260

V, Paper No. 6

Div. 7, Room 312

U. S. Patent Office, Dec. 20, 1922, Mailed.

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number, date of filing, title of Invention, and name of the applicant.

Department of the Interior, United States Patent Office, Washington

Dec. 20, 1922.

Chester W. Brown, 514 W. Van Buren St., Chicago, Ill.:

Please find below a communication from the Examiner in charge of the application of O. P. Smith, filed May 24, 1921, Housing for Conveyor Cars and Tracks. Serial No. 472,312

Thomas E. Robertson, Commissioner of Patents.

Case reconsidered as amended July 18, 1922.

Claims 1 and 3 are rejected on patent 729,120, Bertram, May 26, 1903, 191-49, as the contact carriage in this patent is considered the equivalent of the conveyor car.

Claim 4 is rejected on patent to Bertram as there would be no invention involved in placing a door in Bertram's cover.

As now advised, claim 2 is allowed.

C. G. Jarboe, Examiner.

D. 472,312 15

[fol. 283] #7

Assoc. Atty.

U. S. Patent Office, May 1, 1923, Division VII.
U. S. Patent Office, May 1, 1923, Record Room.

Associate Power of Attorney

———, 191-.

Hon. Commissioner of Patents.

SIR: Please recognize Geo. C. Shoemaker, Rooms 402, 404, 405 McGill Building, 908 G Street Northwest, Washington, D. C., as associate in the matter of the application of O. P. Smith, an improvement in Housing for Conveyor Cars & Tracks, filed May 24, 1921, Serial No. 472,312, Room No. 312.

Respectfully, Chester W. Brown.

(25-cent documentary stamp.)

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[fol. 284] #8

Amendment B

Application Room, May 4, 1923, U. S. Pat. Office. 11718
U. S. Patent Office, May 5, 1923, Division VII.

Div. 7, Room 312

Owen P. Smith. Housing for Conveyor Cars and Tracks.
Filed May 24, 1921. Serial No. 472,312

Washington, D. C., May 3, 1923.

Honorable Commissioner of Patents.

Sir: In response to the official action of December 20, 1922, the above entitled application is hereby amended as follows:

Cancel claims 1, 3, and 4.

Re-number claim 2 as 1, and insert the following:

Per C

B¹. 2. In a continuous housing for concealing a rail track and conveyer car having a laterally extending arm, posts on either side of the track, timbers attached to the upper and lower ends of the posts to form a frame, the upper timbers being inclined upwardly, adjustable stay rods connecting the upper ends of the posts to support the inner side wall of the frame, boards attached to the frame to form a covering, one side of the covering having a continuous opening therein through which the arm extends.

3. In a continuous housing for concealing a rail track and conveyer car having a laterally extending arm, base timbers below the ground surface, having rails thereon, posts on each side of the rails, connected to the base timbers and extending upwardly therefrom, the inner post being of less height than the outer post, inclined timbers connecting upper ends of the posts, and screw threaded adjustable stay-rods secured to the upper end of the outer

472,312 17
11719

[fol. 285]

post and supporting the inner post therefrom.

Sig.

Remarks

The two new claims submitted herewith are believed to patentably define over the reference to Bertram. In this reference we do not find the construction of the frame as called for by the claims, nor do we find the inner side wall of the frame supported in the manner called for by the claims. It is thought, therefore, that the case is now in condition for allowance.

Respectfully submitted.

Geo. C. Shoemaker, D. A. G., Attorney for Applicant.

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[fol. 286] 2-260

RP Paper No. 9

Div. 7, Room 312

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number, date of filing, title of Invention, and name of the applicant.

Department of the Interior, United States Patent Office, Washington

Dec. 14, 1923.

Geo. C. Shoemaker, McGill Bldg., Washington, D. C.:

Please find below a communication from the Examiner in charge of the application of O. Smith, Housing, etc., May 24, 1921, 472,312.

Thomas E. Robertson, Commissioner of Patents.

Amended May 4, 1923.

Claim 2 is rejected as vague and indefinite, as "posts" are referred to in line 2 of the claim, and "the post" in line 4, but it is not apparent which post is referred to in line 4.

Claim 3 appears to be allowable, and claim 1 stands allowed.

C. G. Jarboe, Examiner, Division 7.

D.

472,312 19

[fol. 287] #10

Amendment C

Application Div., Jan. 4, 1924, U. S. Patent Office.
U. S. Patent Office, Jan. 5, 1924, Division VII.

Division 7, Room 312

Owen Smith. Housing for Conveyor Cars and Tracks.
Serial No. 472,312. Filed May 24, 1921

Washington, D. C., January 4, 1924.

Hon. Commissioner of Patents.

SIR: Responsive to the Official action of December 14, 1923, amendment is hereby made as follows:
Claim 2, line 4, change "post" to —posts—.

Remarks

The above correction is believed to relieve the claim of informality and place the same in condition for allowance, a formal notice of which is solicited.

Respectfully, Geo. C. Shoemaker.

472,312 20

[fol. 288] 2-181

Div. 7, RFP

Patent Office, Jul. 3, 1924, Mailed.

[Marginal notes:] In remitting the final fee give the serial number at the head of this notice. Uncertified checks will not be accepted.

Address only the Commissioner of Patents, Washington, D. C.

Serial No. 472,312

Department of the Interior, United States Patent Office,
Washington

July three, 1924.

O. P. Smith:

SIR: Your application for a patent for an improvement in Housing for Conveyor Cars and Tracks, filed May 24, 1921, has been examined and allowed, 3 claims.

The final fee, twenty dollars, must be paid not later than six months from the date of this present notice of allowance. If the final fee be not paid within that period, the patent on this application will be withheld, unless renewed with an additional fee of $20, under the provisions of Section 4897, Revised Statutes.

The office delivers patents upon the day of their date, and on which their term begins to run. The printing, photolithographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will require about four weeks, and such work will not be undertaken until after payment of the necessary fee.

When you send the final fee you will also send, distinctly and plainly written, the name of the inventor, title of invention, and serial number as above given, date of allowance (which is the date of this circular), date of filing, and, if assigned, the names of the assignees.

If you desire to have the patent issue to assignees, an assignment containing a request to that effect, together with the fee for recording the same, must be filed in this office on or before the date of payment of final fee.

After issue of the patent uncertified copies of the drawings and specifications may be purchased at the price of ten cents each. The money should accompany the order. Postage stamps will not be received.

[fol. 289] Final fees will not be received from other than the applicant, his assignee or attorney, or a party in interest as shown by the records of the Patent Office.

Respectfully, Thomas E. Robertson, Commissioner of Patents.

Geo. C. Shoemaker, 509 McGill Bldg, Washington, D. C.

472,312 21

2-327

$20 Rec'd Aug. 7, 1924. C. C. U. S. Patent Office.

Final Fee Paid to United States Patent Office

(Be careful to give correct Serial No.)

Serial No.: 472,312.

Inventor: Owen P. Smith. Patent to be issued to: as per record.

Name of invention as allowed: Housing for Conveyor Cars and Tracks.

Date of of payment: August 7, 1924.

Fee: Twenty Dollars: Date of filing: May 24, 1921.

Date of circular of allowance: July 3, 1924.

The Commisisoner of Patents will please apply the accompanying fee as indicated above.

Chester W. Brown, Attorney.

Send patent to Mr. Chester W. Brown, 318 W. Wesley St., Jackson, Mich.

472,312 22

[fol. 290] [CLERK'S NOTE.—Sheets 23 to 32, inclusive, of this file wrapper, being notices to the Commissioner of Patents of suits pending in certain courts, are omitted as they are the same as the notices printed on pages 255 to 264, inclusive, and the copies of drawing and letters patent are omitted as they are the same as in plaintiff's Exhibit No. 3—Smith Patent No. 1,507,440—appearing at page 167.]

2-421

1921

Contents

46. Games and Toys, Arenas.
1. Application, 2 papers.
2. Rej., Feb. 28, 1922.
3. Amendment A, July 18, 1922.
4. Letter to office, July 18, 1922.
5. Letter to office, Aug. 25, 1922.
6. Rej., Dec. 20, 1922.
7. Assoc. Atty., May 1, 1923.
8. Amendment B, May 4, 1923.
9. Rej., Dec. 14, 1923.
10. Amendment C, Jan. 4, 1924.
11. Notice of suit, Aug. 7, 1926.
12. Notice of suit, Oct. 5, 1926.
13. Notice of suit, Dec. 4, 1926.
14. Notice of suit, Jan. 15, 1927.
15. Notice of suit, July 14, 1927.
16. Notice of suit, July 14, 1927.
17. Notice of suit, July 28, 1927.

18. Notice of suit, Aug. 20, 1927.
19. Notice of C. C. of Appeals, Oct. 3, 1927.
20. Notice of suit Nov. 11, 1927.

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[fols. 291 & 292] DEFENDANT'S EXHIBIT No. 7

390

Department of Commerce, United States Patent Office

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the File Wrapper and Contents, in the matter of the Letters Patent of Owen P. Smith, Number 1,630,812, Granted May 31, 1927, for Improvement in Traction Cars and the Like.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this seventh day of January in the year of our Lord, one thousand nine hundred and twenty-eight and of the Independence of the United States of America the one hundred and fifty-second.

Thomas E. Robertson, Commissioner of Patents.

Attest: D. E. Wilson, Chief of Division. (Seal.)

(Here follows file-wrapper, patent No. 1,630,812, side folios 293-294)

[fol. 295] $20 Rec'd May 24, 1926. C. C. U. S. Pat. Office.

Telephone: 5478

Patents. Experimenting Works. Models

Chester W. Brown & Co., Patent Attorneys, 514 W. Van Buren St., Chicago

May 21st, 1926.

Commissioner of Patents, Washington, D. C.

DEAR SIR: Herewith I hand you application of O. W. Smith for Patent, together with drawings, and remittance for $20 to cover first government fees.

Resp'y, Chester W. Brown.

111 1

293-294

NUMBER (Series of 1925)

111153

PATENT NO. 1630812

1926

DATED MAY 31 1927

(EX'R'S BOOK) 20262

DIV. 34

Name OWEN P. SMITH

69
71

of MIAMI

State of FLORIDA

81077-8

Invention TRACTION CARS AND THE LIKE

Division of App., No. filed .19

ORIGINAL	RENEWED
APPLICATION FILED COMPLETE MAY 24, 1926	3/17 + 41 5/17
Petition, Specification, Oath, First Fee $30, 1 sheets Drawings, MAY 24, 1926	67 67/77
Examined and passed for Issue Apr. 11, 1927	Renewal and passed for Issue, 19
G.H.Dr. Mpaew Exr. Dis. 34	Exr. Dis.
Notice of Allowance APR 11 1927, 19	Notice of Allowance, 19
Final Fee $20 May 4, 1927	Final Fee, 19

Attorney CHESTER W. BROWN 51 W BEST VAN BUREN ST CHICAGO ILLS

Associate Attorney

No. of Claims Allowed 3 Print Claim

In O. G. Class 105 - 165

Title as Allowed Tractor Cars & the like

[fol. 296] Mail Room, May 24, 1926, U. S. Patent Office.

8435. Paper No. 1. 111153

Petition, with Power of Attorney

To the Commissioner of Patents:

Your petitioner, Owen P. Smith, a citizen of the United States, and a resident of the City of Miami, in the County of Dade and State of Florida, and whose Post Office Address is at No. 1626 N. W. Ninth Avenue in said city, prays that Letters Patents may be granted to him for the improvement in Traction Cars and the like set forth in the annexed specification:

And he hereby appoints Mr. Chester W. Brown, of No. 510 West Van Buren Street, in the City of Chicago, County of Cook and State of Illinois, his att[redacted], with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Signed at the City of St. Louis, in the County of St. Louis and State of Missouri, this 18th day of May, 1926.

Owen P. Smith.

---

812. U. S. Patent Office, May 27, 1928, Division XXXIV

Specification

To all whom it may concern:

Be it known, that I, Owen P. Smith, a citizen of the United States, and a resident of the City of Miami, in the County of Dade and State of Florida, have invented certain new and useful improvements in Traction Cars and the like, of which the following is a specification.

[fol. 297] Sub. B' 8436

The present invention was originally filed as a part of Serial No. 595,045, filed October 17th, 1922, and has been

divided out of said application, and filed herewith as a separate application on the requirement of the examiner in charge.

[Matter enclosed between rules erased in copy.]

This invention relates to cars for operation upon rail tracks, and especially to the class of cars mounted upon four flanged wheels, or trucks having four flanged wheels each, to be operated upon tracks having sharp turns which the car is required to make at very high speed.

Per A'.

The object of my present invention is to provide such a car wherein the wheels will automatically follow the curve of the track and thus avoid danger of jumping from the track and injuring the car and causing damage to nearby property.

Another obeject is to provide such a car, which can be operated from a distance, and without any person aboard the car to steer or guide it on the curves, and which will uniformly and automatically negotiate the curves without jumping the track, no matter how high a speed car the ∧ may attain in *in* such curves.

With the above, and other objects in view, which will more particularly appear in the following description, I have shown in the accompanying illustrations embodiments [illusrations]* one [embodyment 22 ment] ∧ of my said inventions, as applied to electric cars for use on dog racing tracks as patented by me.

" A[22].

In the accompanying drawings, in which like numerals of reference refer to similar parts throughout the various views,

Figure 1 is a top plan view of an electric car showing my construction.

Figure 2 is a side elevation, showing the forward part of the car with parts removed to show operating parts.

[fol. 298] 8437

In the construction generally of cars for operation upon rail tracks, it has been customary to mount the cars upon either four flanged wheels, in the case of small cars, or in case of large cars, upon two trucks of four wheels each. Generally the said wheels are fixedly attached to an axle, and said axle is mounted to rotate in bearings rigidly attached to the frame. This construction holds the forward and rear wheels rigidly in line, whether traveling on a straight track, or around curves, and as a consequence, whenever the car turns a curve, the wheels on one side must slide against the outer rail to adapt the direction to the direction of the curve. While such cars operate quite satisfactorily on straight tracks, and around large curves at slow speed, yet whenever attempt is made to operate them around a sharp turn at a high speed, they are very likely to jump the track, and even if they do not jump the track, the wear on the flanges of the wheels, and on the outer rail becomes excessive.

Per B-13.

The cars which I have illustrated herein, are adapted for use in my Dog Racing Amusement, as patented in former patents to me, and are adapted to operate at high speed around a small track, with sharp turns, and to be operated from the control tower at some distance from the track, and in practice I have found them very safe and efficient.

In the construction of the car illustrated in the accompanying drawings, I have preferably constructed a rectangular frame of angle irons as 1 and 2 for the sides, and 3 and 4 for the ends, these parts being securely attached together at the corners by rivets, or welding, as preferred. To support the working parts of said car, and strengthen said frame, I have provided cross members, as 6, 7 and 8, all of which are attached to the side pieces as shown. Near the rear of the frame, as at 9 and 10, I have provided suitable

(3) 111 4

[fol. 299] 8438

bearings for the axle 11, which is rotatably mounted in said bearings. At the ends of this axle 11 I have fixedly attached the two flanged wheels 12 and 13.

Near the forward part of my frame, I have provided the pivotally mounted cross bar 5, which is mounted at its mid-center upon a bolt, pin or king-bolt 18 passing through the mid-center of said cross-bar, and through an opening provided in the cross piece 6 of the frame. At the extremities of the cross-bar 5 I have provided suitable guides, as 14, 15, 16, 17 which are attached to the upper side of said cross bar and then extend upward, and again horizontally to engage the upper edge of the angle irons 1 and 2 forming the side frame of the car, the object of said guides, being to retain the cross-bar 5 in substantially horizontal position while in operation.

An axle 22 is rotatably mounted in two bearings 20 and 21 fixedly attached to said cross-bar 5, and on the extremities of said axle are fixedly mounted to two traction flanged wheels 23 and 24. At 27 and 28 I have shown two tension springs which are located one upon either side of the center or king-bolt attaching the cross-bar to the frame, the other end of each spring being suitably attached to the cross piece 7 at suitable points for the purpose. I have preferably attached said springs to the cross-bar 5 by means of screw eyes 32, 32, with nuts upon the opposite side of said cross bar, thus affording means of increasing or reducing the tension of one or both of said springs, when desired. At 29 I have mounted a suitable electric motor upon said frame, for operation of said car through current supplied thereto by a third rail 33, or other suitable means. A gear wheel 30 upon the shaft of said motor is in mesh with an idle gear wheel [30a]* mounted upon the frame, which in turn is in [gear]* with the gear 31 mounted upon the rear axle 11, and in consequence, whenever the electric motor is rotated in operation the gearing rotates the rear axle, and the rear wheels propel the car along the track 34 and in the usual way.

per A. 31a

" " mesh

111. 5

[fol. 300]

[*Words and figures enclosed in brackets erased in copy.]

In the foregoing construction, as will be seen, I have sideways provided front wheels which are mounted to turn ^ when negotiating a curve, the same as the front wheels of a buggy or automobile are turned in negotiating a curve. By this construction, the wheels can readily adapt themselves to the direction of the curve, and follow the rails around the curve without the usual risk of jumping the track, as when the front and rear wheels are held rigidly in alignment. As my cars are too small to carry an operator to turn the front wheels when approaching the curves, I have provided the means shown consisting of the swiveled front axle, and the tension springs connected from said swiveled axle to the frame. The springs are preferably adjusted by means of and nuts to the screw-eyes such tension as shall be best suited to the purpose for which the car is employed. In straight tracks, or those having slight curves, the tension of the two springs should be slight and equal. On tracks where the car is continually describing a small circle at high speed, as in the Dog Racing Track, the tension of the spring on the outer side should be much less than the one on the inner side, permitting thereby ^ [permiting]* the wheels to turn in the direction of the curve at very slight pressure upon the flange of the outer wheel. While I have shown tension springs in use, yet it is apparent that any equivalent means may be employed to accomplish this result, without departing from the spirit of the invention.

Per A23.

While I have shown the front wheels only as swiveled, it is apparent that the rear wheels may also be swiveled, or the rear wheels only swiveled, or that the wheels on one side may be mounted to turn on a pivot, and the wheels on the other side mounted rigidly.

111. 6

[fol. 301] 8440

I usually employ weights, of suitable size as 35, 35 mounted upon the forward part of the car to assist to hold the ing ^ car upon the track.

Per A.

Having thus described my invention, what I

[*Words and figures enclosed in brackets erased in copy.]

claim and desire to secure by Letters Patent, is the following:—

1st. In a traction Car of the class described, the combination with a frame, of a motive power mounted upon said frame, traction wheels mounted upon an axle rotating in bearings rigidly attached to said frame, wheels mounted upon a second axle rotating in bearings mounted upon a support adapted to rotate pivotally about its mid-center,

2

Insert A1 , and springs connected between said sup-

A1

port and the frame adapted to hold said wheels normally in alignment with the afore mentioned wheels.

2nd. In a device of the class described, the combination with a motor driven car, of an axle rotatably mounted in bearings rigidly attached to said car, wheels fixedly mounted upon said axle, a second axle rotatably mounted in bearings attached to a cross bar pivoted at its mid center to the frame and adapted to turn to right

2

Insert A2 or left, , springs connected from said

A2

bolts

Per A [cross bar]* , to the frame on either side of its center adapted to hold said cross bar normally at right angles to the direction of travel of the car.

Sub. A3, C[l. 3

3rd. In a device of the class described, the combination of a car comprising a frame, front and rear wheels supporting the frame, a cross bar having the front wheels mounted upon it, a king pin pivoting the cross bar to the frame and springs connected with the frame and with the cross bar at opposite sides of the king pin and adapted

111. 7

to maintain the cross bar at right angles to the sides of [fol. 302] s441

the frame, and means for propelling the car.

4th. In a car for operation upon a rail track, a frame,

[*Words and figures enclosed in brackets erased in copy.]

front and rear flanged wheels supporting the frame, two of said wheels mounted upon axle adapted for forward and rearward movement with relation to the frame, springs connected between said movable axle and the frame adapted to hold said wheels in alignment with the direction of movement of the car and means for propelling the said car upon said track.

Off.

5th. In a device of the class described, the combination with a frame, wheels supporting said frame mounted upon axles, pivotally mounted to the frame at their mid-center, springs adapted to hold said axles in alignment with the direction of travel of the car and means for propelling the car.

6th. In a traction car adapted for operation upon a rail track, a frame mounted upon flanged wheels, two of said wheels being mounted upon axles rotating in bearings pivotally mounted upon the frame and adapted to turn forward or rearwardly in turning around a curve, springs connecting said bearings to the frame adapted for holding said bearings, axles, and wheels normally in position with wheels in line of travel of the car, and means for propelling said car along the track.

[Matter enclosed between rules erased in copy.]

111 8

[fol. 303] 8442

In testimony whereof, I have duly signed the foregoing specification.

Owen P. Smith.

Oath

State of Missouri,
County of St. Louis, ss:

Owen P. Smith, the above named petitioner, being sworn, deposes and says; that he is a citizen of the United States and resident at No. 1626 N. W. Ninth Avenue in the City of Miami, in the County of Dade and State of Florida; that he verily believes himself to be the original, first and sole inventor of the improvement in Traction Cars and the like described and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof,

or patented or described in any printed publication in any country before his invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to his application, and that said invention has not been patented in any country foreign to the United States on an application signed by him or his legal representatives or assigns more than twelve months prior to this application, and that no application for patent on said improvement has been filed by him or his representatives or assigns in any country foreign to the United States.

Owen P. Smith.

Sworn to and subscribed before me this 18th day of May, 1926. Marie Kennedy Stelle, Notarial Public. My commission expires Nov. 2nd, 1929. (Notarial Seal.)

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[fol. 304] 260

Paper No. 2

Mailed Oct. 15, 1926.

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number date of filing, and name of the applicant.

Department of Commerce, United States Patent Office, Washington

Div. 34, Room 304

JWL/MB.

Oct. 15, 1926.

Please find below a communication from the Examiner in charge of this application.

Thomas E. Robertson, Commissioner of Patents.

Applicant: Owen P. Smith. Ser. No. 111,153. Filed May 24, 1926. For Traction Cars and the Like.

Chester W. Brown, 510 West Van Buren St., Chicago, Ill.:
References made of record:

60,868, Fairfax, Jan. 1, 1867, 105/165.
64,640, De Huff, May 14, 1867, 105/169.

243,796, Robinson, July 5, 1881, 105/165.
245,414, Towell, Aug. 9, 1881, 105/165.
532,937, Allen, Jan. 22, 1895, 105/169.
1,061,146, Towle, May 6, 1913, 105/165.
1,412,383, Barrow, Apr. 11 1922, 105/165.

This application has been examined.

Page 2, line 7, after "each" insert a comma.

Same page, line 22, correct "illustrations" and "embodiment."

Page 4, line 3 from bottom, change "30a" to —31a— line 2 from bottom, change "gear," first occurrence, to —mesh—.

Page 5, line 23, correct "permitting."

Page 6, line 2, after "holding," insert —the—.

In Fig. 1, change numeral "43" to —13—.

The statement on page 2 in the first paragraph to the effect that this application is a division of Serial Number

111 10

[fol. 305] 595,045, filed October 17, 1922, is incorrect. As appears from such former case, now patented as Patent Number 1,591,569, dated July 6, 1926, this application discloses in Fig. 2, particularly, matter not originally shown, and might, therefore, be properly termed merely a "continuation-in-part" of such former case.

However, as indicated by the patents cited above, it appears that this application contains no patentable subject matter, and claims 1 to 4, inclusive, are rejected as failing to patentably distinguish therefrom.

Claims 5 and 6 are rejected as clearly unwarranted by insufficient disclosure.

G. R. Simpson, Examiner.

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[fol. 306] Application Div., Oct. 30, 1926, U. S. Patent Office.

U. S. Patent Office, Nov. 1, 1926. Division XXXIV.

Paper No. 3 A 8443

Div. 34, Room 304

Owen P. Smith. Ser. No. 111,153. Filed May 24, 1926.
Traction Cars and the Like

Washington, D. C., October 28, 1926.

Hon. Commissioner of Patents Washington, D. C.

SIR: Responsive to the Office action of October 15, 1926, amendment in the above entitled application is hereby made as follows:

Page 2, line 7, after "each" insert a comma
same page, line 22, correct "illustrations" and "embodiment."

Page 4, line 3 from the bottom, change "30a" to —31a—; same page line 2 from the bottom change "gear" first occurrence, to —mesh—.

Page 5, line 23, correct "permitting."

Page 6, line 2, after "holding" insert —the—

Claim 1, line 6 after "mid-center" insert

A'. —guides on said support and engaging the frame to hold said support in horizontal position—.

Claim 2, line 6, after "left" insert

A'. —bolts extending through said cross bar and being provided with adjusting means and—,

same claim, line 7, cancel "cross bar" and insert—bolts—.

111 12
8444

[fol. 307] Cancel claims 3, 4, 5 and 6 and insert:

A'. 3. In a device of the character described, a frame comprising side and end members, an axle journalled in bearings carried by the frame and having wheels thereon, cross members extending transversely of the frame to form supports, a cross bar pivotally supported by one of the cross members for swinging movement in a horizontal plane, an axle carrying wheels journalled in supports on said pivotal cross

bar, guides on said cross bar and extending upwardly and outward to engage the side frame, thereby holding the cross bar in horizontal position, bolts passing transversely through the cross bar on both sides of the pivotal connection between the cross bar and cross member and springs connecting the said bolts with a second cross member to hold said cross bar and the axle carried thereby normally at right angles to the direction of travel of the car, and means for propelling the car carried by the said last mentioned cross member.

Remarks

The Chief draftsman has been instructed to change the numeral "432" to 13 in Fig. 1. In connection with the statement on page 2 in the first paragraph, to the effect that this application is a division of Serial No. 59,045, permission is requested to erase from the drawings those portions not shown in the drawing of the original application, which is now patent No. 1,591,569. The structure shown in the pres-

111 13
8445

[fol. 308] ent drawings that is not shown in the former drawing does not relate to the present invention at all, has not been described, and no claims have been directed to this subject matter and will not be directed to this subject matter. The subject matter claimed, however, is clearly shown in the drawing of the original application, and it is not thought that the mere addition of another figure to the present case can affect the question of division. So far as applicant can ascertain, the only features shown in the present drawings that were not shown in the old drawings are the extension at the rear of the car together with the spring pressed shoe which engages the third rail, and the battery which is shown in the original drawing is not shown in the present case. It is not thought to be necessary to illustrate this battery, since, of course, it does not relate to the present case. If permission is given to correct the drawings in this manner, then the objection of the examiner to the statement on page 2 will be eliminated, and it is believed that applicant is certainly entitled to correct the drawings to this extent.

The claims in his case have been reduced in number and claim 1 has been amended to bring out the fact that the sup-

port is provided with guide members which engage the frame and hold the support in horizontal position. There does not appear to be any such structure in any of the references cited by the examiner, and it is believed that this limitation places this claim in condition for allowance.

Claim 2 has been amended to bring out the specific struc-

111 14
8446

[fol. 309] ture of the means to which the springs are secured and calls for bolts extending through the cross bar and having adjusting means thereon. This is a specific manner of providing securing means for the springs and the adjustment of the springs is absolutely essential for the proper functioning of the device.

The new claim 3 very distinctly and minutely points out applicant's construction and includes both the guide members, the bolts to which the springs are attached and the fact that one of the cross members carries the cross bar on which the pivotal axle is mounted, and the second cross members carries the propelling means. This is a very specific construction and it is believed that the examiner would be clearly justified in passing this case to issue.

Respectfully submitted.

Chester W. Brown.

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[fol. 310] Application Div., Oct. 30, 1926, U. S. Patent Office.

U. S. Patent Office, Nov. 1, 1926, Division XXXIV.

Paper No. 7

Div. 34, Room 304

Owen P. Smith. Ser. No. 111,153. Filed May 24, 1926. Traction Cars and the Like

Letter to Chief Draftsman

Washington, D. C., October 27, 1926.

Hon. Commissioner of Patents, Washington, D. C.

Sir: The chief draftsman is requested to change the numeral "43" to 13, in Fig. 1 of the drawing in the above entitled application.

Respectfully, Chester W. Brown.

Received in Div. C Nov. 3, 1926.
Corrected. No charge. Nov. 16, 1926.

[fol. 311] 260

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Paper No. 5

Mailed Mar. 31, 1927.

Address only "The Commissioner of Patents, Washington, D. C.," and not any official by name.

All communications respecting this application should give the serial number, date of filing, and name of the applicant.

Department of Commerce, United States Patent Office, Washington

Div. 34, Room 304

JWL. MB.

Washington, March 31, 1927.

Please find below a communication from the Examiner in charge of this application.

Thomas E. Robertson, Commissioner of Patents.

Applicant Owen P. Smith. Ser. No. 111,153. Filed May 24, 1926. For Traction Cars and the Like

Chester W. Brown, 510 West Van Buren St., Chicago, Illinois:

As amended October 30, 1926, this application has been considered.

Page 3, line 13, the word "large" was inserted before filing of the application before "curves." and then apparently partly erased. Directions should be given for either insertion thereof or cancellation.

The statement in the first four lines of page last 2 should be revised, as stated in the Office action, to identify this application, not as a division, but a "continuation in part" of applicant's former copending case, which should be fully identified as being now Patent No. 1,591,569.

[fol. 312] Relative to the request for permission to erase from the drawings those portions not shown in the drawing of the original application, to render this a true division, such is not approved, as follows: Claims 2 and 3 set forth as a ground for novelty the "bolts passing through the cross bar," claim 2 further calling for "adjusting means" thereon, such feature being one which is neither described nor shown in the original application.

The claims appear to be allowable. Attention is called to the fact that if this application is properly designated as a continuation in part, all features claimed which are shown in the original application, get the benefit

111 17

of the date thereof, whereas those features presented herein, not disclosed in the original application, as noted in part above, cannot relate back thereto.

G. R. Simpson, Examiner.

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[fol. 313] Application Div., Apr. 7, 1927, U. S. Patent Office.

U. S. Patent Office, Apr. 8, 1927, Division XXXIV.

Paper No. 6

8447. B

Div. 34, Room 304

Owen P. Smith. Traction Cars and the Like. Filed May 24, 1926. Serial No. 111,153

Washington, D. C., April 6, 1927.

Hon. Commissioner of Patents, Washington, D. C.

SIR: In response to the Official Action of March 31, 1927, please amend the above entitled application as follows:

Cancel the first paragraph of page 2 and insert

B¹. —The present invention is a continuation in part of my application Serial No. 595,045, filed October 17, 1922, now Patent No. 1,591,569.

Page 3, line 13, the word "large" should appear before "curves" and it is asked that it be inserted.

Remarks

It is believed that the elimination of the first paragraph of page 2 and the substitution of the statement that this

111 19

[fol. 314] application is a continuation in part of application Serial No. 595,045 eliminates the necessity of correcting the drawing or making any other changes in the case.

It is asked that the application be passed to issue immediately.

Respectfully submitted.

Owen P. Smith, by Chester W. Brown, Attorney for Applicant.

[fol. 315] [Marginal notes:] In remitting the final fee give the serial number at the head of this notice. Uncertified checks will not be accepted.

Serial No. 111,153

Address only the Commissioner of Patents, Washington, D. C.

Department of Commerce, United States Patent Office, Washington

April Eleven, 1927.

Div. 34, mb

Owen P. Smith.

Sir: Your application for a patent for an improvement in Traction Cars and the Like, filed May 24, 1926, has been examined and allowed (3 claims).

The final fee, twenty dollars, must be paid not later than six months from the date of this present notice of allowance. If the final fee be not paid within that period, the patent on this application will be withheld, unless renewed within two years after the date of this notice with an additional fee of $20, under the provisions of Section 4897, Revised Statutes.

The office delivers patents upon the day of their date, and on which their term begins to run. The printing, photolithographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will require about four weeks, and such work will not be undertaken until after payment of the necessary fee.

When you send the final fee you should also send, distinctly and plainly written, the name of the inventor, title of invention, and serial number as above given, date of allowance (which is the date of this circular), date of filing, and, if assigned, the names of the assignees.

If you desire to have the patent issue to assignees, an assignment containing a request to that effect, together with the fee for recording the same, must be filed in this office on or before the date of payment of final fee.

After issue of the patent uncertified copies of the drawings and specifications may be purchased at the price of ten cents each. The money should accompany the order. Postage stamps will not be received.

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[fol. 516] Final fees will not be received from other than the applicant, his assignee or attorney, or a party in interest as shown by the records of the Patent Office.

Respectfully, Thomas E. Robertson, Commissioner of Patents.

Chester W. Brown, 510 West Van Buren St., Chicago, Ill.

$20 Rec'd May 4, 1927. C. C. U. S. Pat. Office.

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Final Fee Paid to the Commissioner of Patents

(Be Careful to Give Correct Serial No.)

Serial No.: 111,153.
Inventor: O. P. Smith.
Patent to be issued to: As per record.
Name of invention as allowed: Traction Cars and the Like.
Date of payment: May 4, 1927.
Fee: $20.00.

Defendants' Exhibit No. 8 319-320

(No Model.) 2 Sheets—Sheet 1.

J. A. A. PINARD.

DEVICE FOR TESTING THE SPEED OF HOUNDS.

No. 362,396. Patented May 3, 1887.

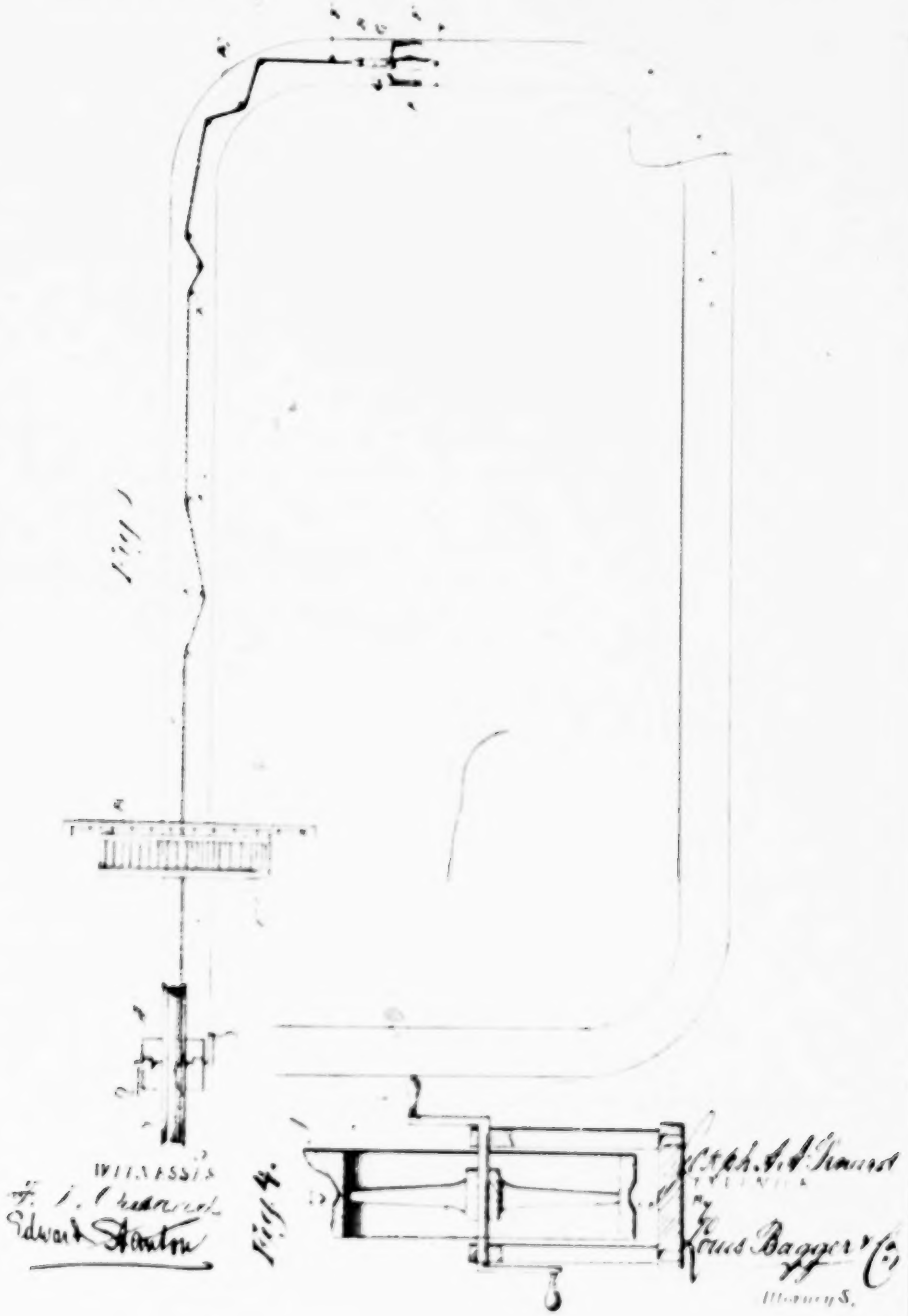

Fig. 1.

Fig. 4.

WITNESSES:
F. L. Ousley
Edward Stratton

Stph. A. Stearns
Louis Bagger & Co.
Attorneys.

321-322

(No Model.) 2 Sheets—Sheet 2.

J. A. A. PINARD

DEVICE FOR TESTING THE SPEED OF HOUNDS.

No. 362,396. Patented May 3, 1887.

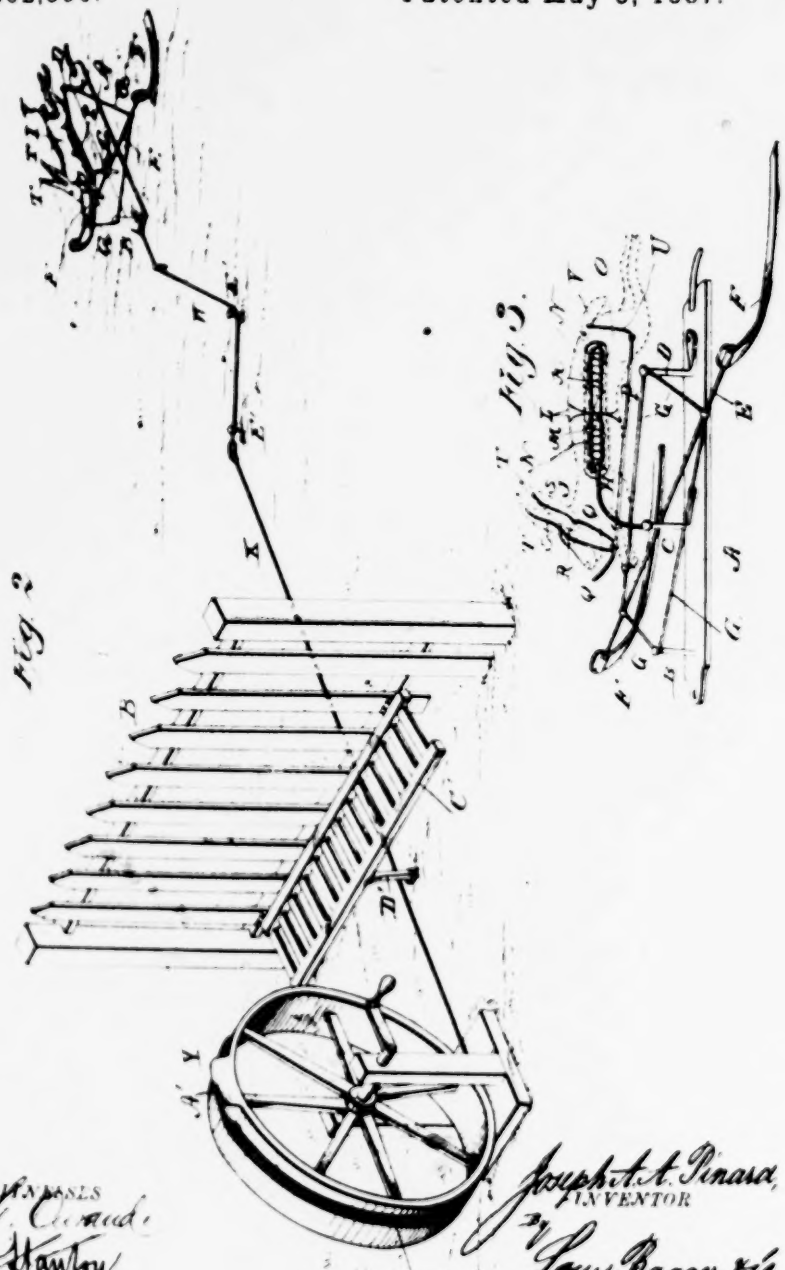

Fig. 2.

Fig. 3.

WITNESSES
F. L. Ciseau
Edward Hawton

Joseph A. A. Pinard,
INVENTOR
By Louis Bagger & Co
Attorneys.

Date of filing: May 24, 1926.

Date of circular of allowance: April 11, 1927.

The Commissioner of Patents will please apply the accompanying fee as indicated above.

Chester W. Brown, Attorney.

Send patent to C. W. Brown, 514 W. Van Buren St., Chicago, Illinois.

Final fees will not be received from other than the applicant, his assignee or attorney, or a party in interest as shown by the records of the Patent Office.

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[fols. 317 & 318] [Clerk's Note.—Sheets 23, 24, and 25 of this File Wrapper, being notices of suits, are omitted as they are the same as notices appearing at pages 261, 262 and 264, respectively, and drawing and copy of Letters Patent omitted as they are shown in plaintiff's Exhibit No. 4—Copy of Smith Patent—appearing at page 171.]

2-421

1926

Contents

1. Application papers.
2. Rejection, Oct. 15, 1926.
3. Amdt. A, Oct. 30/26.
4. Amdt. to Drg., Oct. 30/26.
5. Office Letter, Mar. 31, 1927.
6. Amdt. B, Apr. 7/27.
7. Notice of suit, July 28, 1927.
8. Notice of suit, Aug. 20, 1927.
9. Notice of suit, Nov. 11, 1927.

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(Here follow drawings, side folios 319-320 and 321-322)

[fol. 323] United States Patent Office

Joseph Antony Alfred Pinard, of San José, California

Device for Testing the Speed of Hounds

Specification forming part of Letters Patent No. 362,396, dated May 3, 1887

Application filed August 3, 1886. Serial No. 209,930. (No model)

To all whom it may concern:

Be it known that I, Joseph Antony Alfred Pinard, a citizen of the United States, and a resident of San José, in the county of Santa Clara and State of California, have invented certain new and useful Improvements in Devices for Testing the Speed of Hounds; and I do hereby declare that the following is a full, clear and exact description of the invention, which will enable others skilled in the art to which it appertains to make and use the same, reference being had to the accompanying drawings, which form a part of this specification, and in which—

Figure 1 is a plan view or diagram showing my improved device for testing the speed of hounds. Fig. 2 is a perspective view of the device in operation, showing the imitation hare near the finish. Fig. 3 is a view of the hare and sled, the hare being shown in dotted line; and Fig. 4 is a vertical axial sectional view of the winding-wheel.

Similar letters of reference indicate corresponding parts in all the figures.

My invention has relation to devices for testing the speed of hounds by dragging an imitation of an animal over the ground at considerable speed; and it consists in the improved construction and combination of a device for accomplishing this and of the mechanism for giving the motion of the animal a resemblance to the motion of a live animal, as hereinafter more fully described and claimed.

In the accompanying drawings, the letter A indicates a metallic plate of a sufficient width to form a support for the imitation animal without offering too much frictional resistance when dragged over the ground, and this plate is provided with three uprights, B, C, and D, at the ends and middle of the plate.

A transverse rod, E, is secured at its middle to the central upright and is provided at its ends with curved rearwardly-projecting yielding runner-rods F F, which may serve for the purpose of steadying the base-plate when the latter is dragged over the ground. Oblique brace-rods G are secured at their ends to the end posts of the plate and to the transverse rod, forming a rhomboid frame.

A rearwardly-curved spring, H, is secured to the central upright, C, and passes into the forward portion of the body of the imitation animal I, which is formed by two halves, J and K, having their meeting ends L L rounded. A rod, M, connects these two halves together, as also the ends of two coiled springs, N N, secured loosely within cylindrical recesses O in the two halves of the body.

A rock-shaft, R, is journaled transversely across the head of the animal, to the ends of which shaft are secured the arms S S, which project up through the ears T T. Two other arms, Q Q, are also secured to this shaft and project down toward the front legs of the animal. A horizontal rod, P, is pivotally secured at its front end to the lower ends of the arms Q Q and at its rear end. The rear end of this rod is pivotally connected to a rod, U, the upper end of which is connected to the pivoted tail V of the animal, so that when the two halves of the body are moved, rocking against each other with their rounded ends, the ears and tail will be moved by the said rod and the arms.

The entire body of the animal is covered with skin, in imitation of the live animal, the skin covering all joints in the body.

A flexible rod, W, is attached to the forward end of the plate, and a cord, X, is attached to the forward end of this rod, winding upon a wheel or drum, Y, at the end of the track. This wheel is formed with a groove, Z, into which the cord may be wound, and the side of the wheel is provided with a bulge, A′, projecting from the periphery of the wheel and having a side beveled toward the groove, so that in revolving the wheel and winding the cord upon the same the cord may be drawn up upon the bulge and again slipped off from the same into the groove, causing the plate and animal to jump once at each revolution of the wheel. The wheel may be revolved by any suitable means, and a fence, B′, is built in front of the wheel, having an upwardly-swinging trap-door, C′, through which the cord passes, and

which may be supported by means of a loose prop, D′, which may be tilted when the animal enters through the trap door, allowing the said door to drop.

Pegs E′ are placed in a zigzag line upon the track at curves of the same and immediately in front of the fence, the pegs at the curves serving to guide the cord and at the [fol. 324] same time to give the plate and animal a zigzag movement similar to the motion of a rabbit or hare, and at the end of the course, immediately before the fence, the pegs will stop the speed of the plate and animal, allowing it to pass under the trap-door without damage to itself or to the door.

It will thus be seen that the animal may be started immediately in front of a pack of hounds which will imagine that the animal is alive and will follow it, the motions of the dummy or imitation animal being sufficiently life-like to deceive the hounds and the dummy may be dragged at any desired speed over the course, causing the hounds to follow and to run at their utmost speed, the device thus affording a convenient and sure means for testing the speed of hounds.

The guide runners at the sides of the frame will prevent the dummy from upsetting, and the dummy being supported upon a spring and having the movable halves of its body connected by springs and having the pivoted ears and tail connected by the rod, the motion of the dummy when drawn over the course, and being drawn with sudden jerks when the cord passes over the bulge and slips, will be comparatively life-like, or, at any rate, sufficiently life-like to deceive the hounds, which will follow it in the same manner in which they would follow a live animal. The pegs, being planted in the ground, will also add to the life-like appearance of the animal, as they will give the course of the animal a zigzag motion found in the course of a chased hare or rabbit, besides serving to guide the cord around curves.

Having thus described my invention, I claim and desire to secure by Letters Patent of the United States—

1. A device for inducing hounds to run for speed-testing purposes, consisting of a runner or sled having a cord attached to it and means for swiftly winding the said cord, and a dummy animal supported by springs from the said runner or sled, the body of said dummy being composed of

two halves and adapted to move upon each other at their adjacent ends, as and for the purpose shown and set forth.

2. In a device for inducing hounds to run for speed-testing purposes, the combination of a suitable runner or sled having an upright at its middle, a forward half of a dummy-animal body having a rounded rear end and a cylindrical recess in the said end, a rearwardly-curved spring entering the forward end of the body-half and secured to the upright of the runner, a rear body-half having its forward end rounded and provided with a cylindrical recess, and springs coiled within the recesses and secured in them and having a rod connecting their meeting ends, as and for the purpose shown and set forth.

3. In a device for inducing hounds to run for speed-testing purposes, the combination of a suitable runner or sled having an upright, a dummy-body having a flexible joint at its middle and supported from the upright of the sled upon a spring, a transversely-journaled rock-shaft in the upper portion of the head of the animal and having downwardly-projecting arms and upwardly-projecting ears secured to it, a tail pivoted to the body and having a downwardly-projecting arm, and a rod pivotally secured to the downwardly-projecting arms of the ears and tail, as and for the purpose shown and set forth.

4. In a device for inducing hounds to run for speed-testing purposes, the combination of a plate or runner having uprights at its middle and at its ends and having a dummy animal supported from the middle upright, a transverse rod secured to the central upright and having flexible runners secured rearwardly projecting from its ends, and oblique brace-rods secured to the uprights at the ends of the runner and to the transverse rod, as and for the purpose shown and set forth.

5. In a device for inducing hounds to run for speed-testing purposes, the combination of a runner or sled having a spring-supported dummy animal, a cord attached to the sled, pegs secured in a zigzag line, substantially as described, and means for winding the cord, as and for the purpose shown and set forth.

6. In a device for inducing hounds to run for speed-testing purposes, the combination of a runner or sled hav-

ing a dummy animal upon it and having a flexible rod secured to its forward end, pegs secured, substantially as described, in a zigzag line, and a cord secured to the flexible rod, and means for winding the cord, as and for the purpose shown and set forth.

7. In a device for inducing hounds to run for speed-testing purposes, the combination of a runner or sled having a dummy animal upon it and provided with a cord attached to its forward end, a wheel or drum for winding the cord upon it, and a fence secured in front of the drum and provided with an upwardly-swinging trap-door supported by a movable prop, the cord passing through the door-opening, as and for the purpose shown and set forth.

8. In a device for inducing hounds to run for speed-testing purposes, the combination of a runner or sled having a dummy animal upon it and having a cord attached to its forward end with a wheel having a peripheral groove for receiving the cord and provided in the periphery with a bulge beveled to one side, as and for the purpose shown and set forth.

In testimony that I claim the foregoing as my own I have hereunto affixed my signature in presence of two witnesses.

Joseph Antony Alfred Pinard.

Witnesses: Richard Healy, John Cooney.

(Here follows drawing, side folios 325-326)

[fol. 327] United States Patent Office

Michael Walsh, of New York, N. Y.

Race-Track for Dogs

Specification forming part of Letters Patent No. 611,876, dated October 4, 1898

Application filed September 28, 1897. Serial No. 653,350. (No model)

To all whom it may concern:

Be it known that I, Michael Walsh, of New York city, in the county and State of New York, have invented a new

Defendants' Exhibit No. 9 325-326

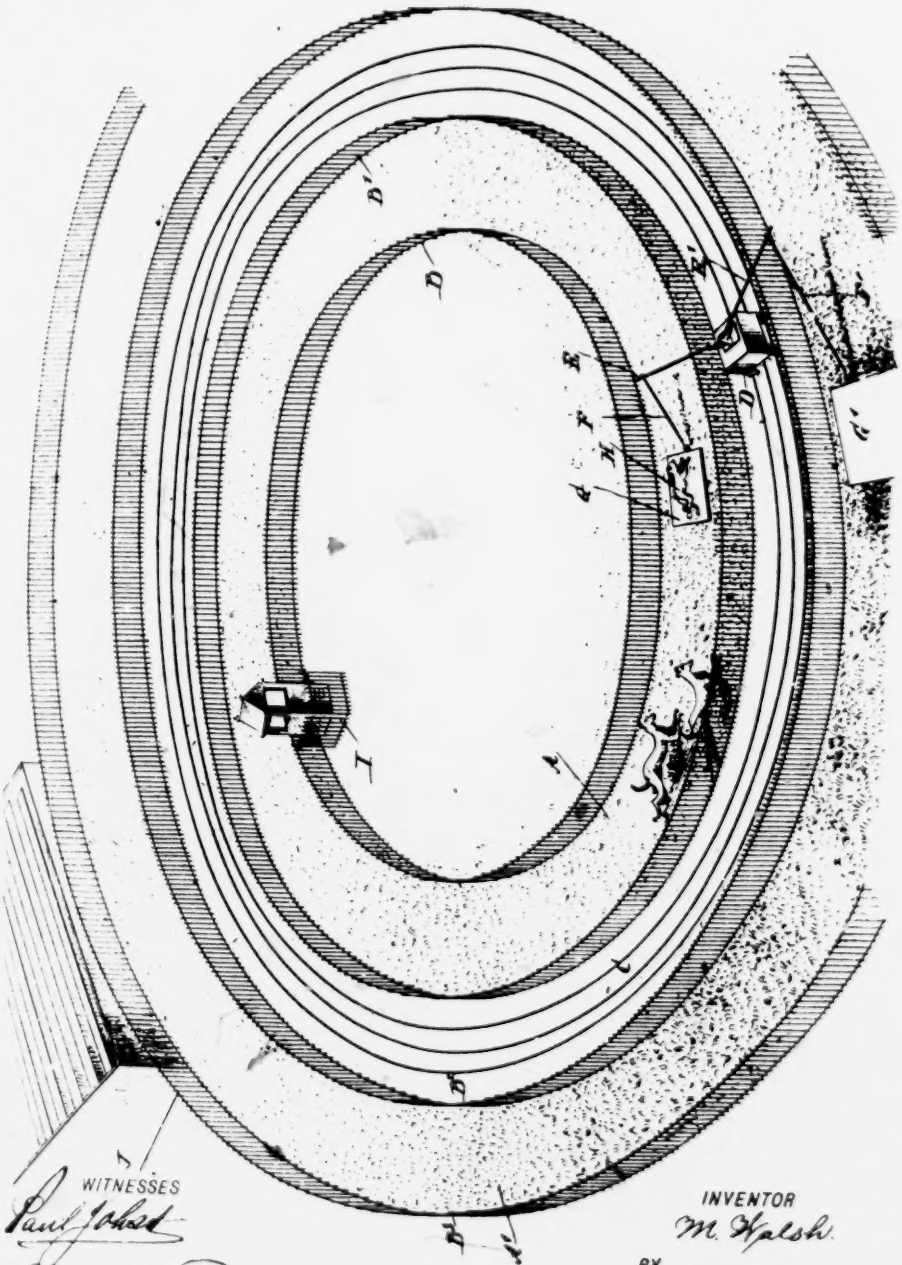
No. 611,876. Patented Oct. 4, 1898.

M. WALSH.

RACE TRACK FOR DOGS

(Application filed Sept. 28, 1897.)

(No Model.)



WITNESSES

Paul Johns

Geo. J. Hoster Jr.

INVENTOR

M. Walsh.

BY Munn & Co.

ATTORNEYS

and Improved Race-Track for Dogs, of which the following is a full, clear, and exact description.

The object of the invention is to provide a new and improved race-track for testing the speed of dogs and other animals in such a manner that the animals during the run are completely unencumbered by harness, riders, or the like, so as to fully bring out the animal's speed qualities.

The invention consists of novel features, parts, and combinations of the same, as hereinafter more fully described, and pointed out in the claims.

Reference is to be had to the accompanying drawing, forming a part of this specification, in which the figure is a perspective view of the improvement.

In a field suitably selected for a race-course is formed one or more tracks A A′, preferably arranged concentric to each other and of an oval, circular, or other form, with the tracks inclosed by suitable fences or railings B B′ and B^2 B^3, respectively, as plainly indicated in the drawing. Between the tracks A A′—that is, between the fences B′ B^2—is arranged a railway-track C for a motor D to travel on, the said railway-track being preferably provided with an underground-trolley system for delivering electricity to the apparatus in the motor D, so as to propel the latter at a desired speed around the track C.

From the motor D extend poles E E′ in transverse directions over the fences B′ B^2 and reach over into the tracks A A′ a suitable distance above the ground thereof, and from the ends of the poles E E′ extend downward and rearward the ropes, rods, or poles F F′, respectively, connected at their lower ends with supports G G′, respectively, made of rubber, canvas, or other suitable material, preferably flexible, so as to readily conform to the undulations of the ground in the tracks A A′ and the grass and other vegetable matter therein.

On each of the supports G is secured a dummy hare H or like object in plain view of the dogs or other animals following the support in the tracks, as indicated in the drawing. The race-course is also provided with the judge's stand I and a grand stand J for spectators sufficiently elevated to enable the persons seated therein to watch the running of the animals in the race-track.

As shown in the drawing, two tracks are employed; but it is evident that a race-course may be built with but one

track, and it is also evident that other suitable mechanical means may be employed for pulling the support G rapidly along in the track for the animals to follow with the hare or dummy in plain view of the animals.

The motor D is arranged in such a manner that its speed is controlled from the judge's stand or other place to always have the support in advance of the following dogs.

Now in starting to race the dogs (preferably greyhounds) entered for testing their speed are held in the track at the starting-point with the support G and motor D somewhere in advance and moving, so that upon releasing the animals they follow the dummy carried on the support around the track to the starting-point, it being understood that greyhounds, for instance, follow the dummy by sight and not by scent.

Now it is evident that by the arrangement described the animals are completely unencumbered by harness, riders, or the like, and hence are free to follow at their utmost speed the fleeing object in front of them to fully bring out their speed qualities.

Having thus fully described my invention, I claim as new and desire to secure by Letters Patent —

1. A race-track for dogs, comprising a continuous track for the animals to run on, a support movable in the said track and adapted to support a dummy hare or other object in view of the animals following in the track, and mechanical means located outside of the track and connected with the said support to move the latter around in the track i advance of the following animals, substantially as shown and described.

2. A race-track for dogs, comprising a track for the animals to run on, a support movable in the said track, and adapted to carry a dummy hare or other object, in view of the animals following on the track, and a motor mounted to travel, and connected with the said support, to move the [fol. 328] latter around in the track in advance of the following animals, substantially as shown and described.

3. A race-track for dogs, comprising a track for the animals to run on, a railroad-track adjacent to but separated from the said race-track, a motor mounted to travel on the said railroad-track, and a support carried by the said

P. EVERETT.

RACE TRACK.

APPLICATION FILED MAY 8, 1912.

1,052,807.

Patented Feb. 11, 1913.

2 SHEETS—SHEET 1.

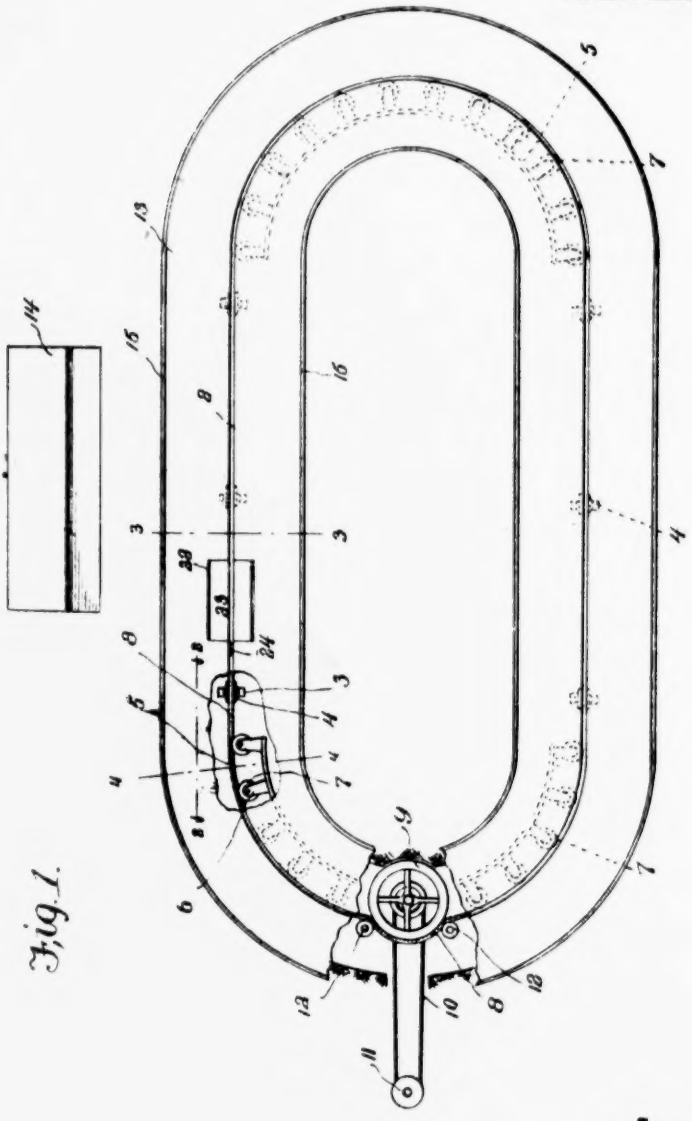


Fig. 1.

Witnesses
William Smith
E. Edwardston Jr.

Inventor
Percy Everett.

By Victor J. Evans
Attorney

P. EVERETT.

331-332

RACE TRACK.

APPLICATION FILED MAY 8, 1912.

1,052,807.

Patented Feb. 11, 1913.

2 SHEETS—SHEET 2.

Fig. 3.

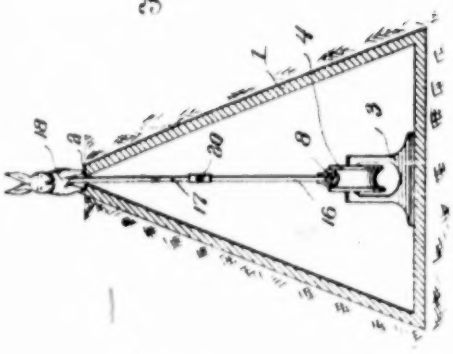


Fig. 4.

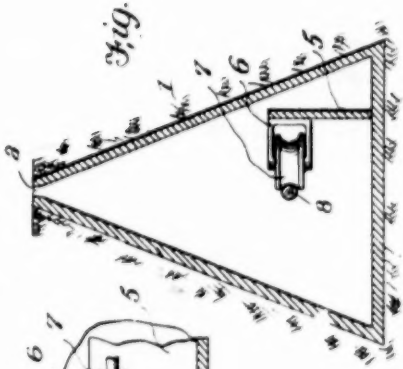


Fig. 2.

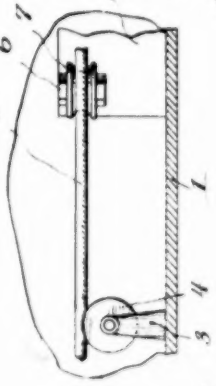
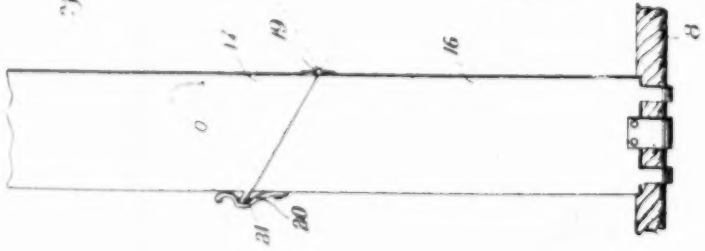


Fig. 5.



Inventor

Percy Everett.

Witnesses

William Smith

E. Edwards Jr.

By Victor J. Evans

Attorney

motor, and arranged to be dragged along in the said race-track, substantially as shown and described.

4. A race-track for dogs, comprising a track for the animals to run on, a railroad-track adjacent to but separated from the said race-track, a motor mounted to travel on the said railroad-track, and a support carried by the said motor, and arranged to be dragged along in the said race-track, the said support being of a flexible material, and adapted to carry a dummy hare or other object, substantially as shown and described.

5. A race-track for dogs, comprising a track for the animals to run on, a flexible support adapted to be dragged in the said track, a motor mounted to travel adjacent to the track, a pole carried by the said motor, and a connection between the said pole and the said support, substantially as shown and described.

Michael Walsh.

Witnesses: Theo. G. Hoster, Jno. M. Ritter.

(Here follow drawings, side folios 329-330 and 331-332.)

[fol. 333] United States Patent Office

Percy Everett, of San Antonio, Texas

Race-Track

1,052,807. Specification of Letters Patent. Patented Feb. 11, 1913

Application filed May 8, 1912. Serial No. 695,974.

To all whom it may concern:

Be it known that I, Percy Everett, a citizen of the United States, residing at San Antonio, in the county of Bexar and State of Texas, have invented new and useful Improvements in Race-Tracks, of which the following is a specification.

This invention relates to race tracks and the object of the invention is to provide a simple and efficient device whereby dogs may be trained to run rabbits, foxes, or the like.

A further object of the invention is to provide a device of this character wherein the artificial animal used is caused to disappear beneath the track at a predetermined time so as to prevent the same from being torn to pieces by the dogs.

Further objects of this invention will appear as the following specific description is read in connection with the accompanying drawing, which forms a part of this application, and in which:—

Figure 1 is a top plan view with parts broken away. Fig. 2 is a vertical section taken on the line 2—2 of Fig. 1. Fig. 3 is a transverse section on the line 3—3 of Fig. 1. Fig. 4 is a similar section on the line 4—4 of Fig. 1. Fig. 5 is a detail vertical section showing the supporting stem, in operative position in full lines and in inoperative position in dotted lines.

Referring more particularly to the drawing, 1 represents an annular casing which is preferably substantially V-shaped in cross section with its side members coming closely adjacent each other at the top to produce a slot 2. This casing is embedded in the ground with the upper ends of the sides flush with the surface thereof and carries upon its base within the casing and in vertical alinement with the slot, suitable bearing supports 3 in which are journaled grooved idlers 4. Also secured to the base are mounting plates 5 having bearing ears 6 secured thereto in which are journaled the pulleys 7. Passing around over the pulleys 4 and 7 is a cable 8 which also passes over a power pulley 9 driven through a belted connection 10 with a suitable drum 11 preferably rotated by a motor, not shown. Suitable idlers 12 hold the cable in engagement with the power wheel, as shown in Fig. 1. The track 13 may be treated in any suitable manner and preferably a grand stand is arranged alongside the track, as indicated at 14, the track being defined by fences 15.

Secured to the cable and passing through the slot 2 is a mounting stem which is constructed in two parts 16 and 17 and upon the upper part is mounted an animal 18, here shown as the representation of a rabbit. The two parts of the stem 16 and 17 are hinged together, as shown at 19, and are held in upright position by means of the spring catch 20 carried by the part 16 and engaged with a lug 21 on the part 17.

At a certain predetermined point in the track, a well casing is connected to the casing 1 and is indicated at 22. Hinged to this casing are separate doors 23 which are operated in any suitable manner and bridging the slot 2 adjacent the well opening is a bolt 24 which, when engaged by the upper portion of the stem, will break the same, as shown in dotted lines in Fig. 5, and cause the rabbit or other animal to be projected into the well casing, as will be readily understood. Many ways may be devised for opening and closing the doors. None have been shown herein as this forms no part of the invention.

In the operation of the device, the imitation animal is set upon the stem with the same in upright position, the motor started, and the dogs turned loose from a suitable starting point. When the imitation animal reaches a predetermined point, the doors are opened preferably by a suitable lever mechanism, and when the same strikes the bolt, the animal is caused to disappear into the well casing 22, as will be readily understood, without stopping the operation of the cable. The casing is in effect a tunnel beneath the ground in which the imitation animal is adapted to travel after the section 17 has been depressed through the doors by coming into contact with the bolt.

What is claimed is:

1. In a device of the class described, an underground endless cable, means for driving the cable, a supporting member traveling with the cable and projecting above the ground, and means to lower the supporting member below the surface of the ground.

2. In a race track, an underground endless cable, means for driving the cable, a two-part supporting member carried by and traveling with the cable, said supporting member projecting above the ground, and means to lower the [fol. 334] upper portion of the supporting member below the surface of the ground.

3. In a race track, an endless underground cable, means for driving the cable, a two-part supporting member carried by the cable, and projecting above the ground, a hinge for connecting the parts of the supporting member, means for holding the parts of the supporting member in alinement with the upper portion projected above the ground, and an abutment lying in the path of the upper portion.

4. In a device of the class described, an underground endless cable, means for driving the same, a two-part supporting member having its parts hinged together and the upper part projecting above the ground, a resilient catch for holding the parts in alinement, and means for breaking the catch and for lowering the upper part below the surface of the ground.

5. In combination, a tunnel having a slot in the same, an endless cable traveling in the tunnel, a supporting member secured to the cable and passing through the slot, and an abutment arranged across the slot for lowering the supporting member into the tunnel.

6. In combination, an annular tunnel having a slot, an endless cable mounted therein, means to drive the cable, and a two-part supporting member connected to the cable and having a part projecting through the slot, a hinge for connecting the parts of the supporting member together, a spring cap for holding the parts of the supporting member in alinement, and an abutment arranged across the slot and adapted to engage the upper portion of the supporting member for breaking the spring catch for lowering the upper part of the supporting member into the tunnel.

In testimony whereof I affix my signature in presence of two witnesses.

Percy Everett.

Witnesses: A. F. Walsh, H. A. Loeffler.

(Here follow drawings, side folios 335-336 and 337-338.)

[fols. 339 & 340] Specification in Pursuance of the Conditions of the Letters Patent Filed by the said William Everatt Hind in the Patent Office on the 4th March, 1884

William Everatt Hind, of Goole, in the County of York

"An Improvement in Apparatus for Training and Testing Coursing Dogs"

For the purpose of training and testing coursing dogs, it has been proposed to have a model in the form of a hare, rabbit or other animal moved rapidly over the ground by means of a band or rope travelling along a sunken tube or trough.

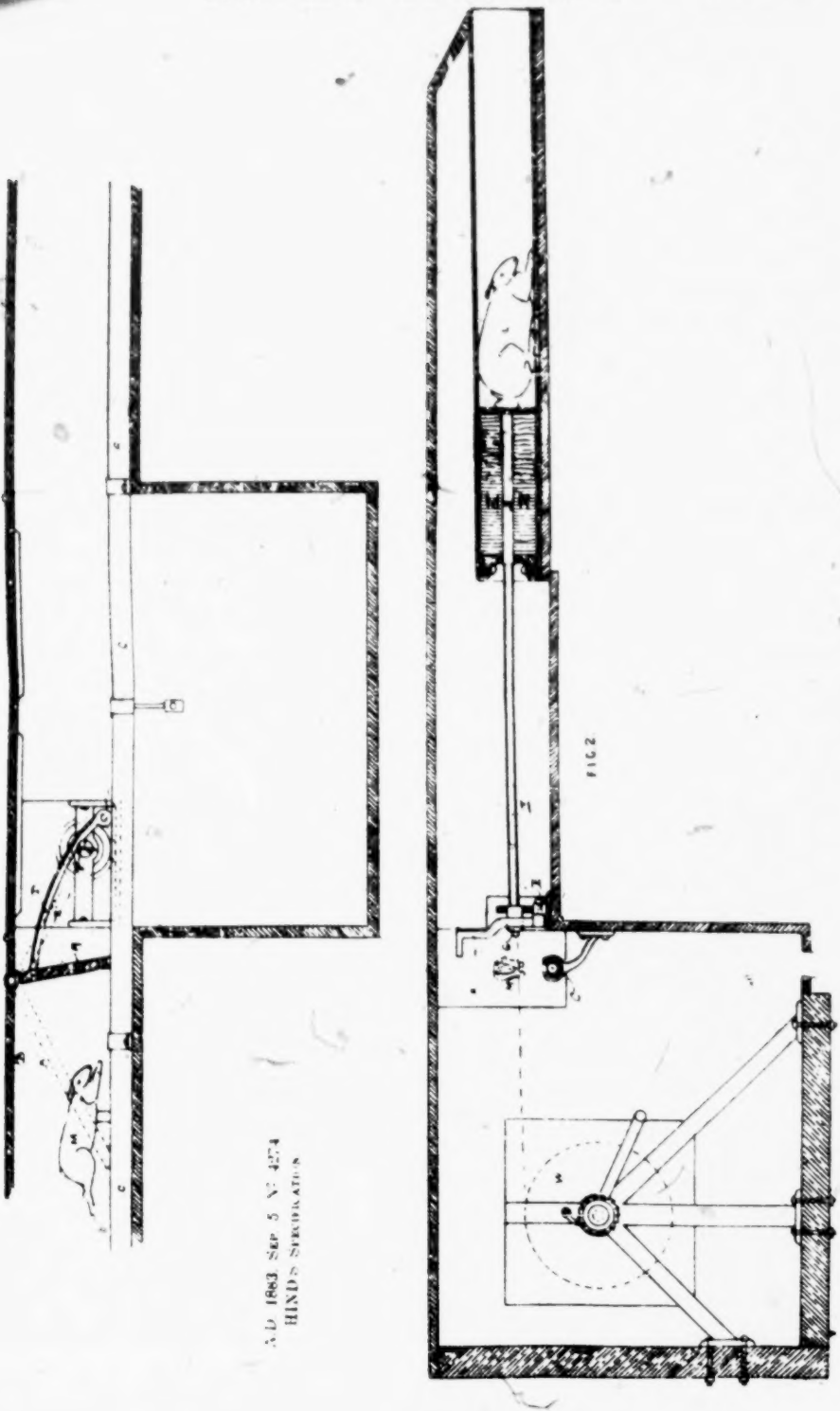


FIG 2
A.D. 1883 SEP 5 N° 4274
HINDS SPECIFICATION

A.D 1883. Sep. 5. N° 4274.
HIND'S Specification.

FIG 3

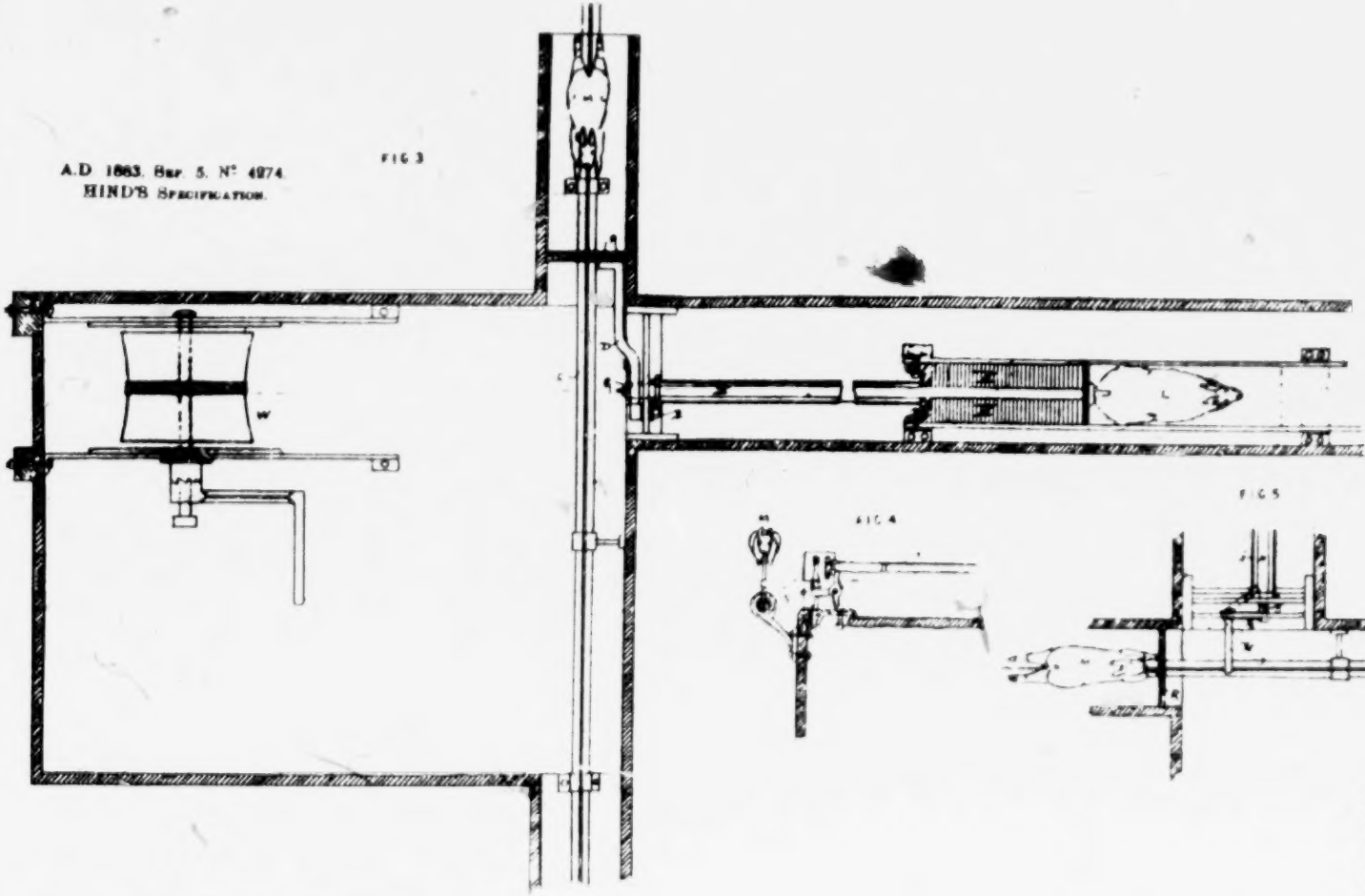


FIG 4

FIG 5

337-338

When such apparatus is employed, the dogs at the end of the course find that the animal pursued by them is not real, and consequently the system often fails to actuate them after a first trial. In order to avoid this, I, according to my invention, provide, at the end of the course, apparatus so arranged that the model disappears and that a real animal, which may be a dead one, is projected forwards, so that the dogs, when they seize it, are satisfied.

The accompanying drawings shew apparatus which I employ for this purpose. Fig. 3 is a sectional plan fig. 2 is a longitudinal section and fig. 1 is a transverse section. The model animal M, which is, in this case supposed to be moved rapidly along the ground by traction of a cord running along a slotted tube C, when it is reaching the end of its course, passes under one leaf B of an angle door or valve, and striking against the other leaf R moves the two leaves into the position indicated by the dotted lines B^1 R^1, the leaf B^1 closing the inlet with a slope so that the dogs pursuing the model meet with no abrupt stop. Within the structure, mostly underground, at the end of the course, a real animal L which may be dead, is placed in a tube against a spring K, which, by means of a guided rod H and a chain or cord attached thereto, had been previously drawn up by a winch W. The winch cord or chain being detached, the spring K is held in compression by the edge of a lever D entering a notch in the head G of the rod H. The lever D is pivotted at E and its end bears against the leaf R, so that when this leaf is pushed inwards by the model animal M, the lever D is raised out of the notch of G, thus releasing the spring rod H. The spring K being thus released, suddenly expands, propelling the animal L out of the tube, and the dogs that had pursued the model animal, can turn aside to devour the real animal. Fig. 4 is a part longitudinal section and fig. 5 a part sectional plan shewing a modified construction of the mechanism for releasing the spring rod. In this case, the head of the spring rod which is fitted to slide along two guide rods S S, is held by one arm of a bell crank lever F, the other arm of which is held down by one arm P of another bell crank N. The latter lever is pivotted at O and has its second arm extending across the path of the model M. When the model M pushes the lever N to the position indicated by

the dotted lines in fig. 5, the arm P being moved off from above the arm of F leaves that lever free, and it allows the spring rod H to escape.

Having thus described the nature of my invention and in what manner the same is to be performed, I claim in respect of apparatus for training and testing coursing dogs by causing a model of an animal to move rapidly along the ground for their pursuit—

Arranging at the end of the course of the model animal, mechanism whereby the model is made to disappear and a real animal is propelled into view of the dogs, substantially as and for the purpose herein set forth.

In Witness whereof I, the said William Everatt Hind have hereunto set my hand and seal this third day of March in the year of our Lord, one thousand eight hundred and eighty-four.

Wm. E. Hind. (L.S.)

London: Printed by Eyre and Spottiswoode, Printers to the Queen's most Excellent Majesty. For Her Majesty's Stationery Office. 1884.

(Here follow drawings, side folios 341-342 and 343-344.)

[fol. 345] United States Patent Office

William H. Vance, of Denver, Colorado

Amusement Apparatus

No. 881,505. Specification of Letters Patent. Patented March 10, 1908

Application Filed July 16, 1906. Serial No. 326,319

To all whom it may concern:

Be it known that I, William H. Vance, citizen of the United States, residing at the city and county of Denver and State of Colorado, have invented certain new and useful Improvements in Amusement Apparatus; and I do declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same, reference being had to the accompanying drawings, and to

Defendants' Exhibit No. 12 341-342

No. 881,505. PATENTED MAR. 10, 1908

W. H. VANCE.

AMUSEMENT APPARATUS.

APPLICATION FILED JULY 16, 1906.

3 SHEETS—SHEET 1.

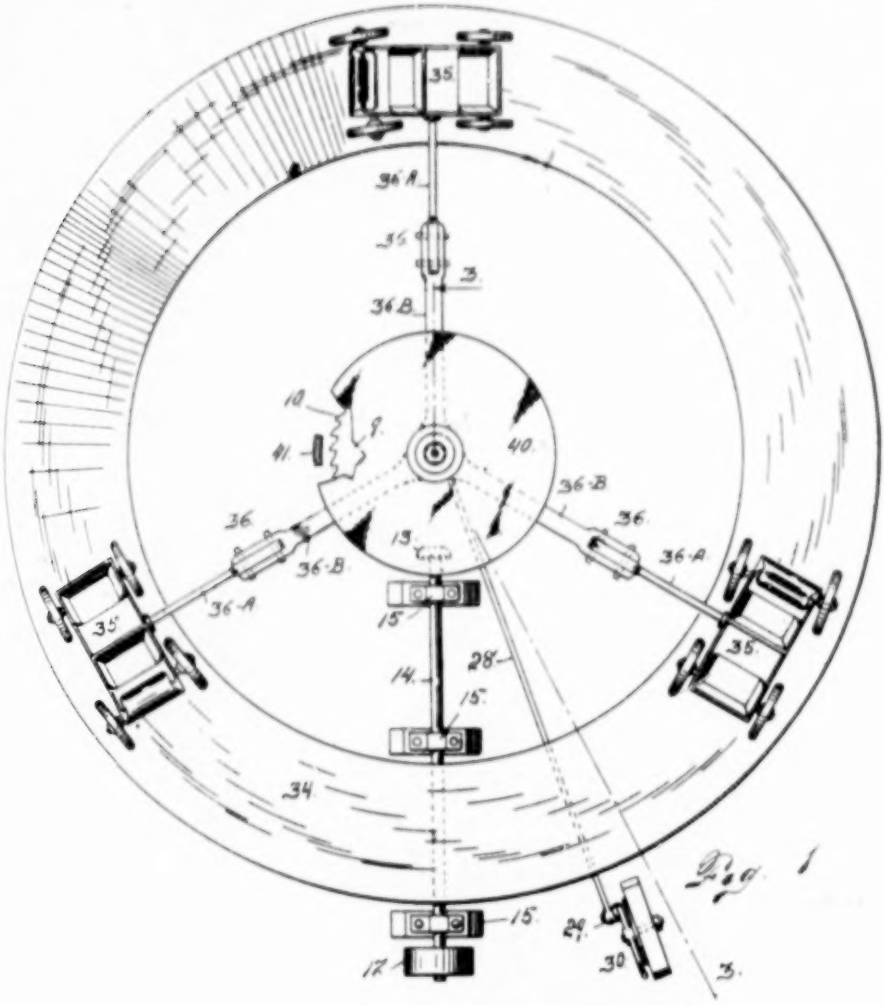


Fig. 1

Fig. 2

Witnesses
Otto E. Hoddick
Dena Nelson

Inventor
Wm. H. Vance
By Wm. H. Vance
Attorney

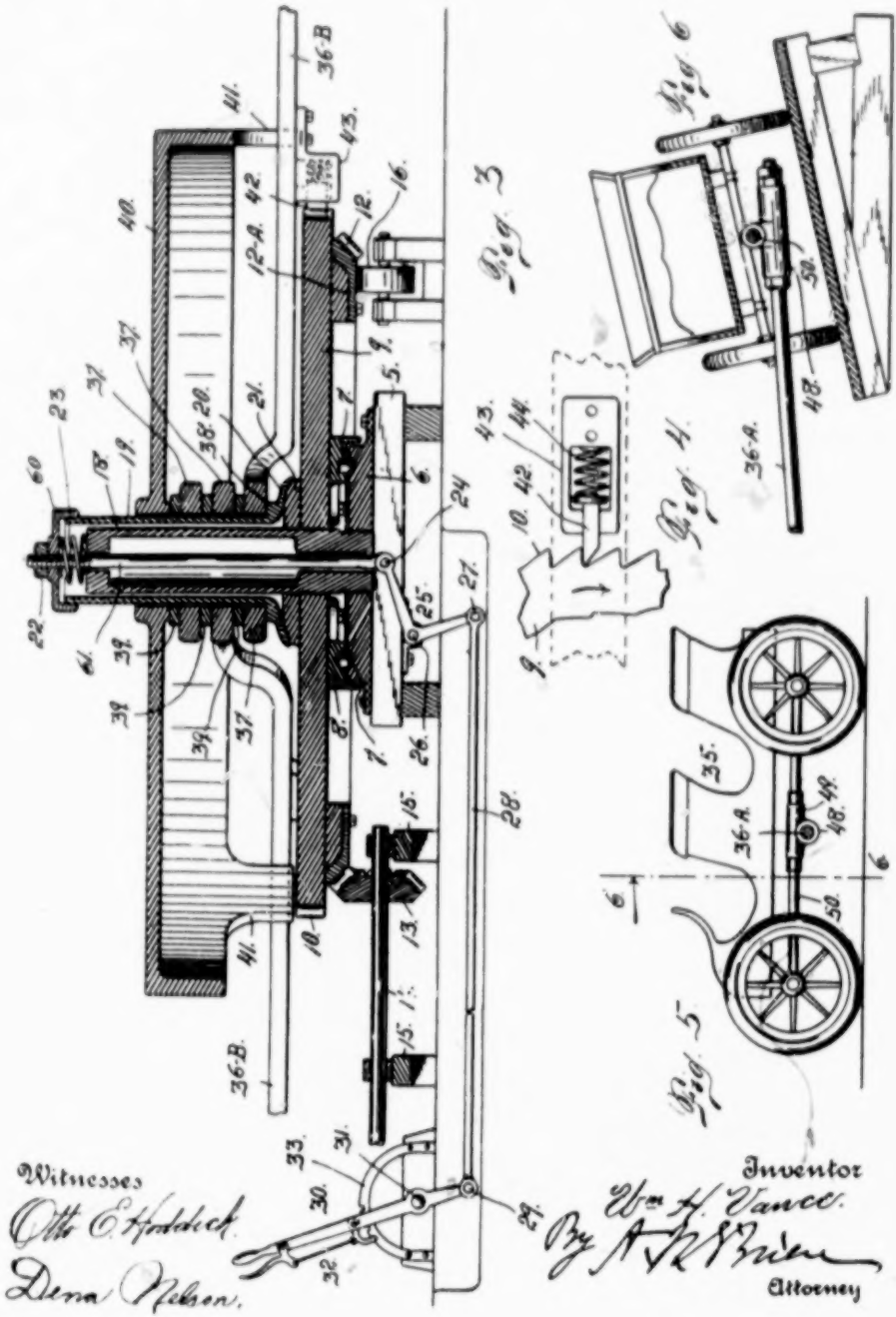
No. 881,505. PATENTED MAR. 10, 1908.

W. H. VANCE.

AMUSEMENT APPARATUS.

APPLICATION FILED JULY 16, 1906.

2 SHEETS—SHEET 2.



the letters and figures of reference marked thereon, which form a part of this specification.

My invention relates to improvements in amusement apparatus of the class usually termed merry-go-round, my object being to provide an improved construction of this class possessing certain novel features of construction and function, all of which will be fully understood by reference to the accompanying drawing in which is illustrated an embodiment thereof.

In this drawing, Figure 1 is a top plan view of my improved apparatus showing the central platform partly broken away and partly in section to disclose an operating ratchet below. Fig. 2 is a detail view illustrating the jointed sweep construction, the parts being shown on a larger scale. Fig. 3 is a vertical cross section taken through the apparatus, the parts being shown partly in elevation. Fig. 4 is a fragmentary detail view illustrating the ratchet gear and pawl construction, the parts being shown on a scale somewhat larger than in Fig. 3. Fig. 5 is a side elevation of one of the vehicles employed in connection with the apparatus shown on a larger scale than in Fig. 1. Fig. 6 is a cross section taken on the line 6—6 Fig. 5.

The same reference characters indicate the same parts in all the views.

Let the numeral 5 designate a central stationary support provided with a stationary bearing member 6 having a circular groove in its upper surface forming a half ball-race for bearing balls 7 which are engaged from above by a bearing member 8 made fast to the under surface of a wheel 9 which is provided at its outer periphery with ratchet teeth 10. To the under surface of the wheel slightly nearer the center, the latter is equipped with a bevel gear 12 which meshes with a bevel pinion 13 fast on a driving shaft 14 journaled in suitable stationary supports 15. The gear 12 is provided with an inward extension 12^A forming a wearing plate which engages track wheels 16 which give an anti-frictional support to the gear wheel 9. The shaft 14 is provided at its outer extremity with a pulley 17 which may be connected with any suitable power for operating the ratchet wheel. Centrally secured to the base 5, is a hollow upright shaft 18 which is surrounded by a loose

sleeve 19 whose lower extremity is outwardly flared as shown at 20 to engage a circular brake block 21 made fast to the upper surface of the wheel 9. The sleeve 19 is provided with a loosely fitting cap 60 through which passes the upper extremity of a rod 61 to which is applied a nut 22 whereby the rod is connected with a cap.

Between the cap and the hollow shaft 18 is located a coil spring 23 the tendency of which is to support the cap whereby the brake sleeve is relieved from pressure from above when the brake is not applied. The rod 61 passes downwardly from the cap through the hollow shaft and is connected below the gear 9 as shown at 24 with one arm of a bell crank lever 25. This lever is fulcrumed at 26 and its other arm is connected at 27 with an operating rod 28 whose extremity remote from the bell crank is connected as shown at 29 with an operating lever 30 fulcrumed at 31 and provided with a locking device 32 co-operating with a quadrant 33.

At a suitable distance from the wheel 9 is located a circular platform 34 surrounding the wheel 9 and forming an undulating track for vehicles 35 which are connected by means of sweeps 36 with the brake sleeve 19. The inner extremity of each sweep is provided with an eye or circular bearing 37 which surrounds and loosely engages the brake sleeve 9. As shown in the drawing there are three sweeps and consequently three sweep eyes 37. The lower of these eyes is located directly above a shoulder 38 formed on the lower extremity of the brake sleeve. The eyes of the respective sweeps are separated by washers 39. There is a similar washer located above the uppermost eye and which separates the said eye from a platform 40 which also loosely surrounds the brake sleeve. This platform is provided with depending parts 41 which lie within the path of the sweeps, and prevent the vehicles from colliding with each other.

Each sweep is connected with the wheel 9 by means of a [fol. 346] spring-actuated pawl 42. This pawl is mounted in a casing 43 secured to the lower surface of the sweep. Within this casing is located a spring 44 which acts on the pawl and normally thrusts the beveled extremity of the latter outwardly to engagement with the teeth 10 of the ratchet wheel.

When the apparatus is in operation, the ratchet wheel is rotated in the direction indicated by the arrow in Fig. 4, whereby the ratchet wheel carries the sweeps along with it by virtue of the engagement of the straight offsets of the ratchet teeth with the pawls of the sweeps. However, by virtue of the undulatory construction of the vehicle track, it happens that the vehicle when moving downwardly on one of the inclined parts of the track, may acquire a speed greater than the speed of the ratchet wheel. In this event the sweep together with the vehicle runs ahead of the ratchet wheel so to speak and the pawl 42 slips over the teeth of the ratchet. When this occurs it may happen that one of the vehicles would have a tendency to come in contact with another, but the depending parts 41 of the platform 40 are so arranged as to prevent this result, since before one vehicle could collide with another, its sweep would strike a projection 41 and interfere with its movement sufficiently to prevent a collision. In other words the depending projections 41 of the platform 40 are so arranged as to prevent any two vehicles from colliding.

The sweeps 36 are composed of two members 36^A and 36^B pivotally connected at 45. The member 36^A has a pin 46 passing through a slot 47 formed in the member 36^B whereby the movement is limited. This jointed sweep construction is important in view of the undulating condition of the track necessitating a certain degree of movement of one sweep member upon the other. Furthermore the outer extremity of each sweep is provided with a sleeve 48 adjustable longitudinally thereon by means of nuts threaded on the sweep and engaging the extremities of the sleeve. This sleeve body 48 is provided with a sleeve 49 extending at right angles to the member 48, and surrounding the reach 50 of the vehicle. The sleeve member 49 is free to turn on the reach, thus giving the sweep sufficient movement with reference to the vehicle, for all practical purposes.

From the foregoing description the use and operation of my improved apparatus will be readily understood. Power being applied to the shaft 14, the wheel 9 is rotated through the instrumentality of the gears 13 and 12, the said wheel turning around the central hollow shaft 18 which maintains the gear in operative relation with the other

parts. The rotation of the wheel 9, imparts a swinging movement to the sweeps and engagement of the ratchet teeth with the pawls of the sweep. In this way the vehicles are caused to travel around the undulatory circular track. This track is highest at its outer edge and slopes downwardly at a suitable inclination (see Fig. 4), whereby the centrifugal force incident to the travel of the vehicles is practically neutralized or overcome.

In further explanation of the action of the brake mechanism, attention is called to the fact that this mechanism acts only to check the speed of the operating wheel 9. In other words when it is desired to stop the machine, by applying the brake whereby the cap 60 is forced downwardly upon the sleeve 19, the outwardly flared extremity 20 of the sleeve is forced tightly against the shoe 21 of the wheel 9 thus having a tendency to stop the wheel.

It will be understood that the cap is locked against rotation by virtue of its connection with the bell crank lever 25 by the rod 61. This brake mechanism does not directly affect the speed of the vehicles except so far as the stopping of the operating wheel has this tendency. After the operating wheel 9 ceases to rotate, the vehicles are at liberty to continue their movement by virtue of their acquired speed or momentum and will continue to move until the friction of the parts stops them.

Having thus described my invention, what I claim is:

1. In amusement apparatus, the combination of an operating wheel provided with ratchet teeth, a central shaft, vehicle sweeps connected with the central shaft independently of each other, each sweep having a ratchet and pawl connection with said wheel whereby the sweeps are propelled by the rotation of the wheel, all of the sweeps being connected with the wheel and free to travel faster than the wheel and independently of each other or at varying speeds.

2. In amusement apparatus, the combination of a centrally located operating wheel provided with ratchet teeth, a central shaft around which the wheel rotates, vehicle sweeps connected in operative relation with the central shaft and mounted to swing independently of each other, a pawl and ratchet connection between the sweeps and the operating wheel whereby the rotation of the wheel actu-

ates the sweeps but the latter are free to move faster than the wheel as described.

3. In amusement apparatus, the combination of an operating wheel, vehicle sweeps mounted to swing independently of the wheel and independently of each other, a pawl and ratchet connection between the sweeps and the wheel, means for operating the wheel, and a platform mounted above the wheel and provided with depending projections located in the path of the sweeps for the purpose set forth.

4. In amusement apparatus, the combination of an oper- [fols. 347 & 348] ating wheel, an undulatory track surrounding the wheel, vehicles mounted to travel on said track, sweeps connected with the vehicles at one extremity, the said sweeps being mounted to swing from the axis of the wheel as a center, and an operative connection between the sweeps and the wheel whereby the rotation of the wheel actuates the sweeps, the latter, however, being free to move independently of each other and independently of the wheel to permit a speed of travel faster than the travel of the wheel.

5. In amusement apparatus, the combination with an operating wheel, an undulatory track surrounding the wheel, vehicles mounted on the track, sweeps mounted to swing from the axis of the wheel as a center, their outer extremities being connected with the respective vehicles, each sweep being composed of two jointed members, and an operative connection between the sweep and the wheel, the sweeps being mounted to travel independently of each other, and suitable connections between the sweeps and the wheel whereby the latter actuates the sweeps while the latter are free to travel independently of the wheel in the direction of the wheel's travel, to permit the sweeps to travel at a greater speed than that of the wheel.

6. In amusement apparatus, the combination of an operating wheel, sweeps actuated from the wheel, a central stationary shaft around which the wheel rotates, a brake sleeve surrounding the shaft and whose lower extremity is outwardly flared to engage a brake shoe formed on the wheel, a cap loosely mounted on the brake sleeve, a rod connected in operative relation with the cap and passing downwardly

through the shaft which is open for the purpose, a bell crank lever with which one arm of the vertically disposed rod is connected, a second rod connected with the other arm of the lever, and an operating lever connected with the last named rod for braking purposes.

7. In amusement apparatus, the combination of an operating wheel, sweeps actuated from the wheel, a central stationary shaft around which the wheel rotates, a brake sleeve surrounding the shaft and whose lower extremity is outwardly flared to engage a brake shoe formed on the wheel, a cap loosely mounted on the brake sleeve, and means acting on the cap to force the brake sleeve downwardly against the brake shoe.

8. In amusement apparatus, the combination of an operating wheel, an undulatory track surrounding the wheel, and a plurality of vehicles actuated by the wheel and mounted to travel on the said track, the vehicles being arranged to move on the track independently of each other and at varying speeds.

9. In amusement apparatus, the combination of a circular undulatory track, vehicles mounted to travel on the said track, and means centrally located and surrounded by the track for propelling the vehicles thereon, the latter being arranged to move on the track independently of each other and at varying speeds.

10. In amusement apparatus, the combination of an undulatory track, a centrally located operating device, a plurality of vehicles mounted to travel on the said track and connected in operative relation with the operating device, the vehicles being arranged to move on the track independently of each other and at varying speeds.

11. The combination of an undulatory track, a centrally located operating device surrounded by the track, vehicles mounted on the track, and sweeps connecting the respective vehicles with the operating device whereby the vehicles are made to travel around the track, the sweeps being jointed to allow the vehicles to change their elevation to conform to the surface of the track, the sweeps being also connected with the operating device to travel independently of each other and at varying speeds.

Defendants' Exhibit No. 13 349-350

J. A. FISHER.

AMUSEMENT DEVICE.

APPLICATION FILED MAY 16, 1916.

1,228,011. Patented May 29, 1917.

2 SHEETS—SHEET 1.

Fig. 1.

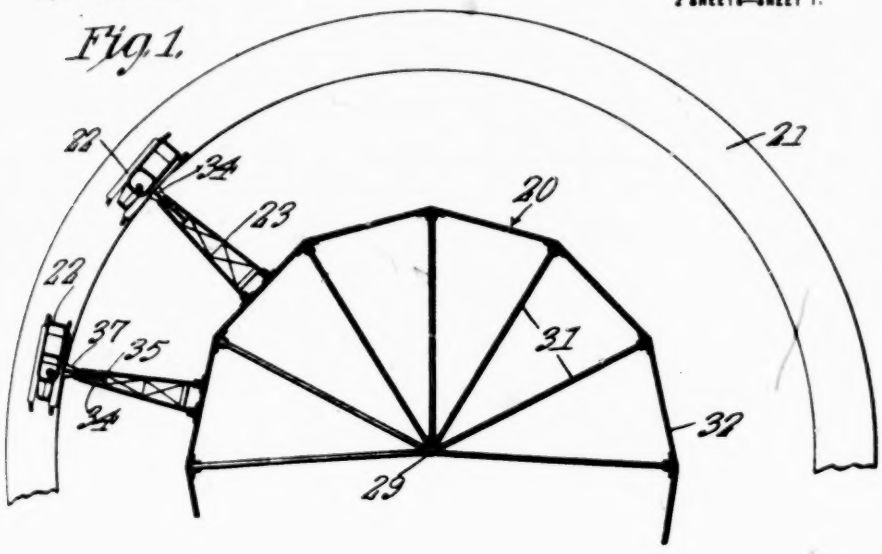


Fig. 2.

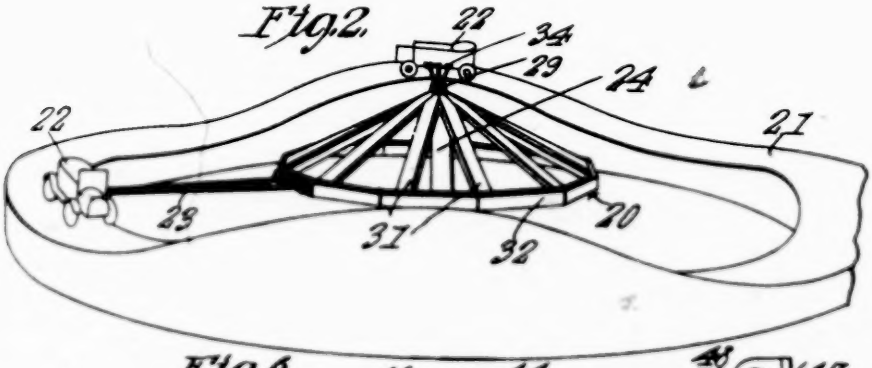


Fig. 6.

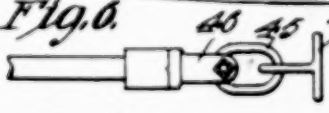


Fig. 8.

Fig. 7.

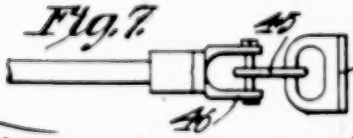


Fig. 9.

Witnesses

J. R. Fowler

R. I. Parker

J. A. Fisher, Inventor

by C. A. Snow & Co.

Attorneys

J. A. FISHER.

AMUSEMENT DEVICE.

APPLICATION FILED MAY 16, 1916.

1,228,011.

Patented May 29, 1917.

2 SHEETS—SHEET 2.

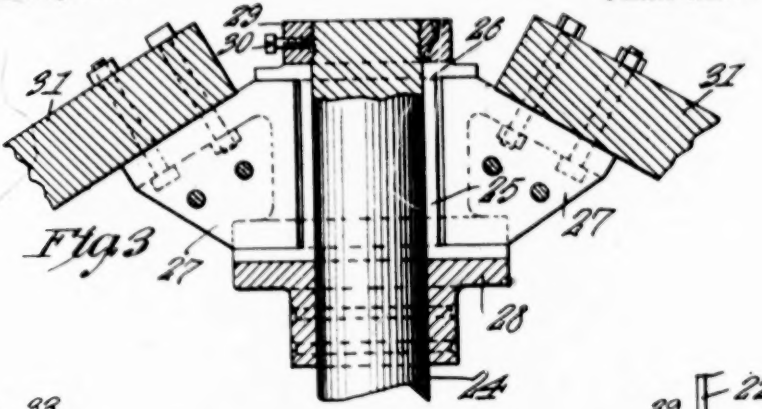


Fig 3

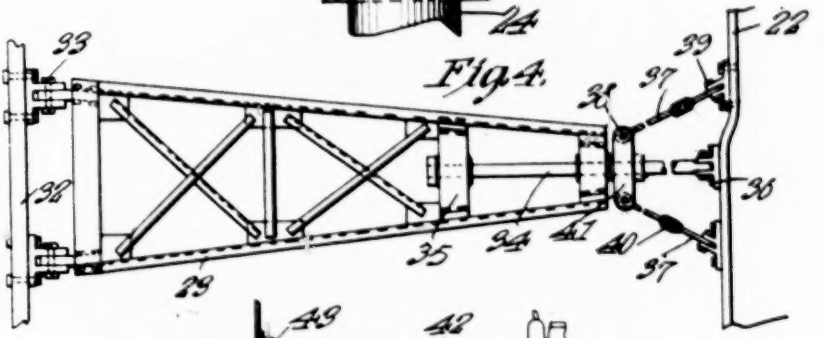


Fig 4.

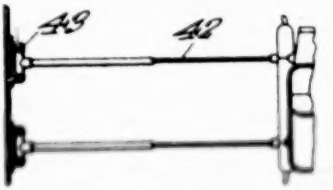
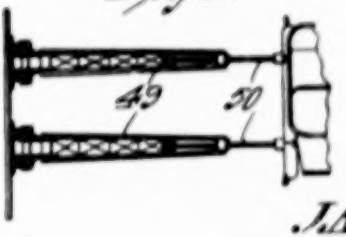


Fig 5.

Fig 1a



Witnesses

J. A. Fisher,
Inventor

by C. A. Snow & Co.
Attorneys

12. The combination of an undulatory track, vehicles mounted thereon, a centrally located operating wheel, sweeps connected with the vehicles, a ratchet and pawl connection between each sweep and the wheel whereby the vehicles are allowed to continue their movement after the operating wheel has ceased to move, the sweep being mounted independently of each other, substantially as described.

In testimony whereof I affix my signature in presence of two witnesses.

William H. Vance.

Witnesses: Dena Nelson, A. J. O'Brien.

(Here follow drawings, side folios 349-350 and 351-352)

[fol. 353] United States Patent Office

John A. Fisher, of Homestead, Pennsylvania

Amusement Device

1,228,011. Specification of Letters Patent. Patented May 29, 1917

Application filed May 16, 1916. Serial No. 97,895

To all whom it may concern:

Be it known that I, John A. Fisher, a citizen of the United States, residing at Homestead, in the county of Allegheny and State of Pennsylvania, have invented a new and useful Amusement Device, of which the following is a specification.

The object of the invention is to provide an amusement apparatus affording novel sensations to the passengers, while affording the maximum security, combined with a simplicity of construction and arrangement securing the utmost facility in the matter of erection, while capable of ready disassemblement for purposes of transportation.

With these and other objects in view as will be brought out in the following description, the invention consists in a certain combination and arrangement of parts of which a preferred embodiment is illustrated in the drawings, it be-

ing understood that various changes in the form, proportions and minor details of construction may be resorted to within the scope of the appended claim without departing from the spirit of the invention.

In the drawings:—

Figure 1 is a plan view of a portion of an apparatus constructed in accordance with the invention.

Fig. 2 is a perspective view showing two of the cars or carriers to illustrate the preferred arrangement of the controlling arms or centripetal members.

Fig. 3 is a detail sectional view of the central portion of the central rotary member.

Fig. 4 is a detail plan view of one of the controller arms or centripetal members.

Fig. 5 is a plan view of a modified construction of controller or centripetal member.

Figs. 6 and 7 are detail plan and side views of a modified form of connection between the controller arms and the car or carrier.

Figs. 8 and 9 are respectively plan and side views of arms or centripetal members and the car or carrier.

Fig. 10 is a plan view of another modified construction of controller or centripetal member.

In the construction illustrated, there is employed a central rotary member 20 surrounded by an undulatory track or runway 21 having one or more rounded rises, and suitably "banked" as illustrated in Fig. 2 for the comfort of the passengers in the cars or carriers 22 which may be of any preferred form or construction, the drawings illustrating the same as of the automobile type. The cars or carriers are connected with the central rotary member by means of controllers or centripetal members 23 which may be of various forms and constructions to permit of the cars or carriers traversing the track or runway, and adapting their positions to the surface of said track or runway, while preventing tangential displacement due to centrifugal action. Moreover the points of connection of the inner ends of the controllers or centripetal members with the central rotary member are below the horizontal plane of the lowermost portions of said track or runway, so that the combined or opposed actions of the cars or carriers and the centripetal members during the operation of the apparatus,

serve to draw the cars or carriers downward upon and hold them firmly in contact with the track or runway.

In the construction illustrated, the central rotary member embodies a vertical shaft or post 24 upon which is mounted a head 25 consisting of a terminally flanged sleeve 26 to which are attached hollow brackets 27, a bearing collar 28 being arranged below said head and the latter being held against displacement upwardly by means of a nut or collar 29 which may be secured by a set screw or pin 30. The radial bars or elements 31 of the rotary frame are bolted at their inner upper ends to the downwardly and outwardly inclined upper surfaces of the brackets 27, and extend radially and downwardly to a peripheral frame bar 32 to which are attached the inner ends of the controllers or centripetal members 23, said peripheral bar being located as above noted, below the horizontal plane at the lowermost portions of the track or runway.

Any suitable or preferred means for imparting rotary movement to the apparatus may be employed,—that is to say, an engine or other motive agent may be employed to turn the central member and thereby through the controllers or centripetal members impart motion to the cars or carriers, or one or more of the cars or carriers, may be provided with traction means, neither plan, however being [fol. 354] illustrated in the drawing as the application thereof will be obvious.

In Figs. 1, 2 and 4 of the drawing there is illustrated a construction of controller or centripetal member consisting of a trussed frame hingedly or pivotally connected as at 33 to the peripheral bar of the rotary frame and tapered toward its outer end with a spindle 34 mounted in suitable bearings 35 and hingedly or pivotally connected at its outer end to the car or carrier as shown at 36, whereby the rocking and other movements of the car or carrier, as it traverses the track or runway, are permitted. Moreover, in connecting the outer end of the trussed frame of the controller or centripetal member with the car or carrier, there are employed guy members 37 pivotally connected at their inner ends at 38 and pivotally or hingedly connected at their outer ends as at 39 to the latter, each guy member consisting of a plurality of elements which are relatively adjustable, to secure the desired tension, by means of turn buckles 40 or the like. It will be noted that the spindle or

rocker 34 permits of rocking or pitching movement of the car or carrier, while the guy members serve to prevent excessive movement tending to cause the jumping and jarring of the car or carrier, the inner ends of the guy members 37 being pivotally mounted upon a head 41 on said spindle or rocker 34.

Fig. 5 of the drawings shows a modified form of controller or centripetal member consisting of spaced rods or elements 42, hingedly or pivotally connected at their inner ends as at 43 with the rotary member of the apparatus and having a suitable loose or hinged connection at their outer ends with the car or carrier, as shown respectively in Figs. 6 and 7 and Figs. 8 and 9. In Figs. 6 and 7 the construction embodies a slotted bracket 44 adapted to be secured to the car or carrier, and a link 45 connecting the bracket with a yoke 46 on the outer end of the radial element of the controller or centripetal member. In Figs. 8 and 9, the construction embodies a slotted bracket 47 directly engaging the cross pin of the yoke 48, the intermediate link being omitted.

In Fig. 10 there is illustrated another modified form of controller or centripetal member, wherein independent elements 49 of trussed construction are employed, the connection between each element and the car consisting of a spindle or rocker 50 mounted for rocking movement in the body portion of said element and hingedly or pivotally connected at its outer end to the car or carrier.

It will be noted that the various members and elements of the apparatus may be readily disconnected for transportation, repair or replacement, and during the operation of the device the effect of the arrangement described is to positively and securely hold the cars or carriers on the track or runway to avoid unnecessary vibration or jarring, while permitting said cars or carriers to follow the undulations of the runway, and therefore a rapid rotation of the central member may be permitted without attendant risk to the occupants of the cars or carriers. Also when, as illustrated in the drawings, a four wheeled vehicle is used as a car or carrier, said wheels may be arranged in such positions relative to the car as to traverse the track or runway without side motion or sliding.

While stress has been laid upon the fact that the points of connection of the inner ends of the centripetal members are below the plane of the runway at its lowest point, it will be understood that the object is to secure a downward inclination of the said arms from their points of connection with the cars to the central rotary member. Therefore the points of connection with said rotary member should be below the plane of the points of connection with the car when the latter is at the lowest point of the track or runway.

It should also be noted with reference to the guy members 37 that they serve to prevent the car or carrier from swinging outwardly or inwardly on the track or runway and therefore tend to relieve the outer end of the spindle 34 of strain.

What I claimed is:

An amusement device embodying a vertically undulatory annular track, cars movable on said track, a rotary member located centrally of said track, tapered trussed centripetal frames extending radially from the rotary member and having their relatively wide ends hinged to the rotary member to swing upwardly and downwardly, bearings passed by said frames at their outer relatively narrow ends, radial spindles journaled in said bearings and projecting from the outer ends of said frames, the outer ends of said spindles being pivoted to the cars to permit said cars to swing upwardly and downwardly, heads upon said spindles, and adjustable guy members pivotally connected to said heads and cars and diverging from said heads to the cars.

In testimony that I claim the foregoing as my own, I have hereto affixed my signature in the presence of two witnesses.

John A. Fisher.

Witnesses: Frank A. Mehaffey, John W. Smart.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

(Here follows drawing, side golios 355-356.)

[fol. 357] United States Patent Office

Josiah B. Dodge, of Sedalia, Assignor of One-half to Thomas E. Fleming, of Graham, Missouri

Race-track

Specification Forming Part of Letters Patent No. 529,162, Dated November 13, 1894

Application Filed September 6, 1894. Serial No. 522,235. (No Model)

To all whom it may concern:

Be it known that I, Josiah B. Dodge, of Sedalia, county of Pettis, and State of Missouri, have invented a new and useful Improvement in Race Tracks, of which the following is a specification.

In starting horses in a race, it is a well known fact, that great trouble, delay and annoyance are caused by the difficulty in securing an even start of the animals.

Various mechanical contrivances have been devised and while to an extent they have answered to cause the horses to start at the same time, their use has been objectionable on account of their location on the track interfering with and obstructing the horses at the "finish."

To overcome the above objections, I form my improved track with a branch extending preferably at a tangent to the same and locate on this branch a starting device of any suitable form, this arrangement avoiding the obstruction of the main track at the finish. My invention consists further in a starting branch joining the main track adjacent to the judges' stand and this with or without the employment of a starting device.

My invention further consists of an improved device for causing the animals to start at the same time, said device comprising two or more stalls or compartments arranged side by side, containing at the rear entrances for the horses and communicating at the front with the track, said stalls being separated by the partitions to prevent the horses occupying the same from observing one another.

Defendants' Exhibit No. 14 355-356

(No Model.)

J. B. DODGE.

RACE TRACK.

No. 529,162. Patented Nov. 13, 1894.

Fig. 1.

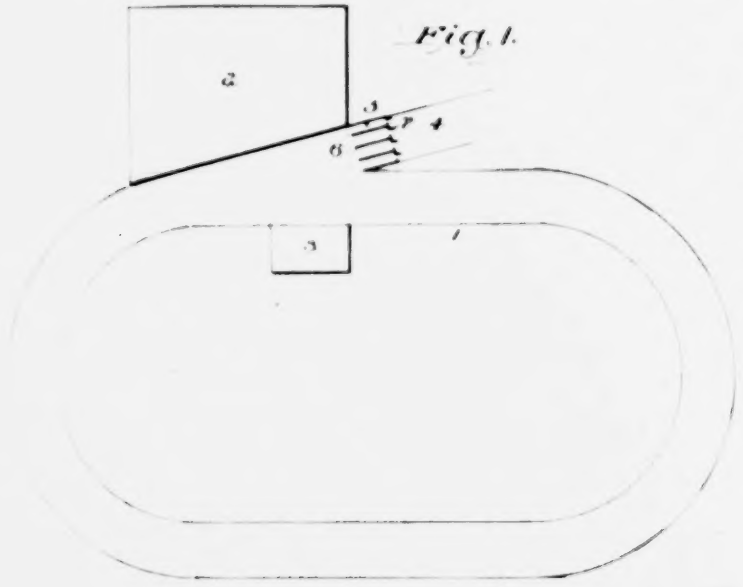


Fig. 2.

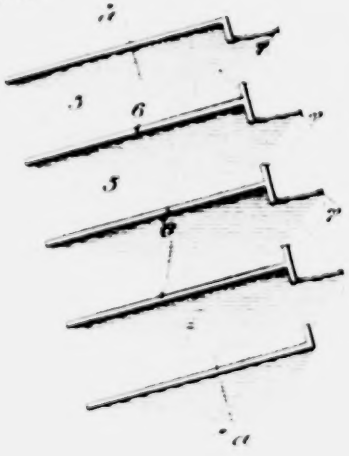
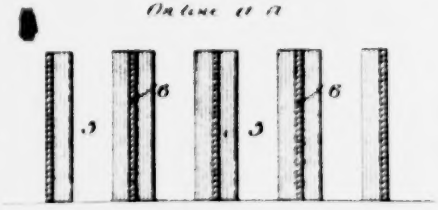


Fig. 3.

Outside a a



WITNESSES

Arthur Ashley

F. A. Elmore

INVENTOR

J. B. Dodge

By Philip T. Dodge

Attorney

In the accompanying drawings:—Figure 1— is a diagrammatical view of my improved track. Fig. 2— is an enlarged top plan view of the starting device. Fig. 3— is a vertical transverse sectional elevation on the line a—a, of Fig. 1—.

Referring to the drawings: 1— represents a track preferably of the continuous circular or elliptical form; 2— the grand stand at the outside of the track and 3— the judges' stand located opposite the grand stand at the inner side of the track.

At a point preferably between the judges' stand and the spectators' stand I provide a branch starting track 4, extending at a tangent to the main track and forming a continuation of the same. The purpose of this starting track is to admit of the use of devices for insuring an even start of the horses, without obstructing the track and interfering with the horses at the "finish."

A starting device of any suitable and appropriate form may be located on the branch track at its junction with the main track or at a point in advance of the same. Under this arrangement, the horses may be started from the branch track at one time, and at the "finish" they will have a clear unobstructed space in front of the judges' and spectators' stands.

In the drawings I have represented an improved device for starting the horses, consisting of a series of stalls 5, arranged side by side in the branch track at a point just in advance of its junction with the main track. The stalls are divided by partitions 6— high enough to prevent the horses occupying them from observing one another. At the rear the stalls are formed with entrance doors 7, while at the front they are open and communicate directly with the track. In starting the horses with this device the animals are entered at the rear into the stalls and at the signal they proceed on to the tangential starting track, thence to the main track traveling around the same and returning to the unobstructed space in front of the judges' stand at the "finish." By the use of these stalls as described, the horses being unable to observe one another will remain comparatively quiet so that when the signal is given they will all emerge from their respective stalls at substantially the same time, thus insuring an even start.

It will be understood that my invention is not to be limited to the combination of my improved track with the peculiar form of starting device. As far as the function of the starting branch is concerned any form of starting contrivance may be employed and any means may be used to insure an even start. The essence of the invention in this respect resides in the provision of a starting track or branch forming a continuation of the main track thus admit-
[fol. 358] ting of the employment of means for insuring an even start of the horses without obstructing the track at the "finish."

Having thus described my invention, what I claim is—

1. The improved race track comprising a main continuous way, a branch starting track forming a continuation of the same and a starting device located on the branch track substantially as specified.

2. In a race track the combination of a main continuous track, a judges' stand, a branch starting track joining the main track adjacent to the judges' stand and forming a continuation of the main track substantially as specified.

3. In a race track the combination of a main continuous way, a branch track forming a continuation of the same and a series of stalls separated by partitions and located on the branch track, said stalls provided at their rear with openings for the entrance of the horses and communicating at their front with the track substantially as specified.

In testimony whereof I hereunto set my hand, this 13th day of August, 1894, in the presence of two attesting witnesses.

Josiah B. Dodge.

Witnesses: E. A. Blakemore, W. M. Fenwick.

(Here follow drawings, side folios 359-360, 361-362, and 363-364)

(No Model.) 3 Sheets—Sheet 1.

J. W. DANIELS.

ELECTRIC RACE HORSE CAROUSEL.

No. 583,109 Patented May 25, 1897.

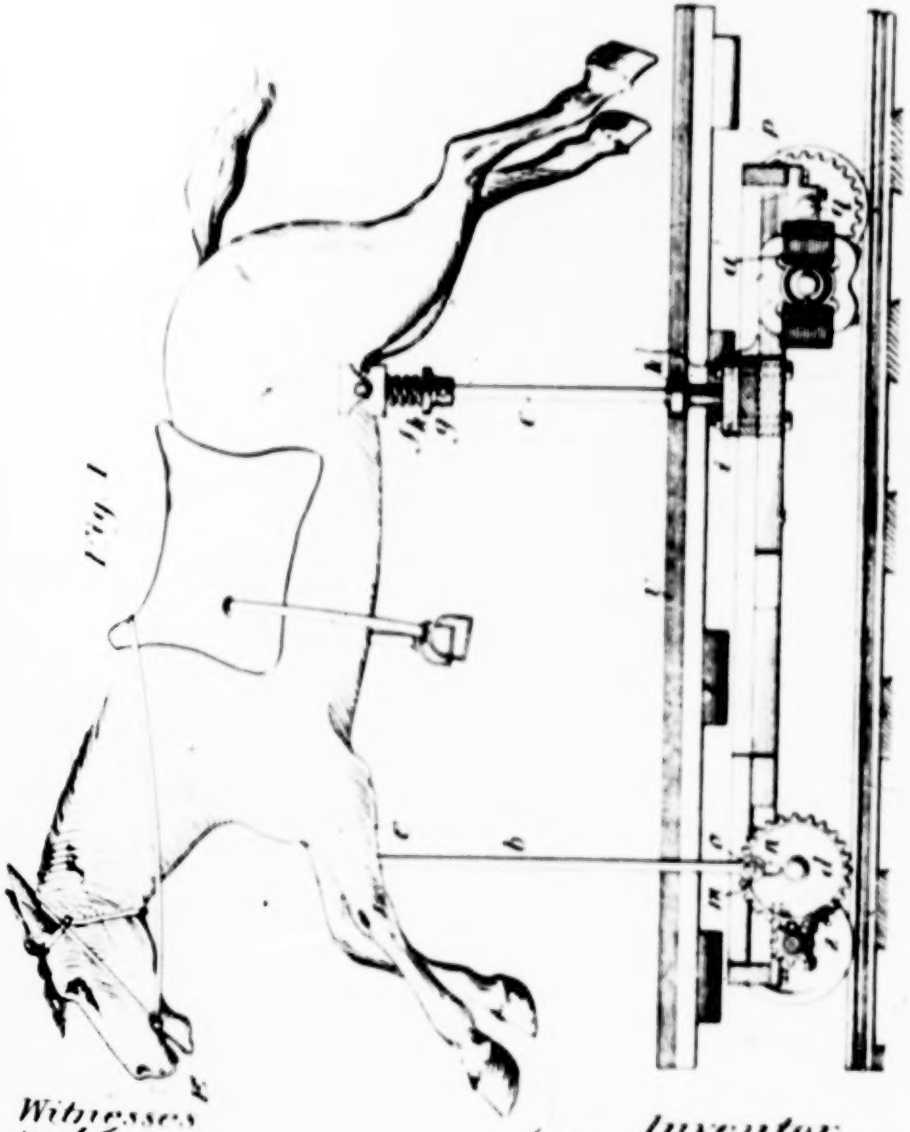


Fig. 1.

Witnesses
W. H. Jones
R. F. Blount

Inventor:
John Harrington Daniels
by Thomson & Kinnear
Atty

361-362

(No Model.) 3 Sheets—Sheet 2

J. W. DANIELS.

ELECTRIC RACE HORSE CAROUSEL.

No. 583,109 Patented May 25, 1897

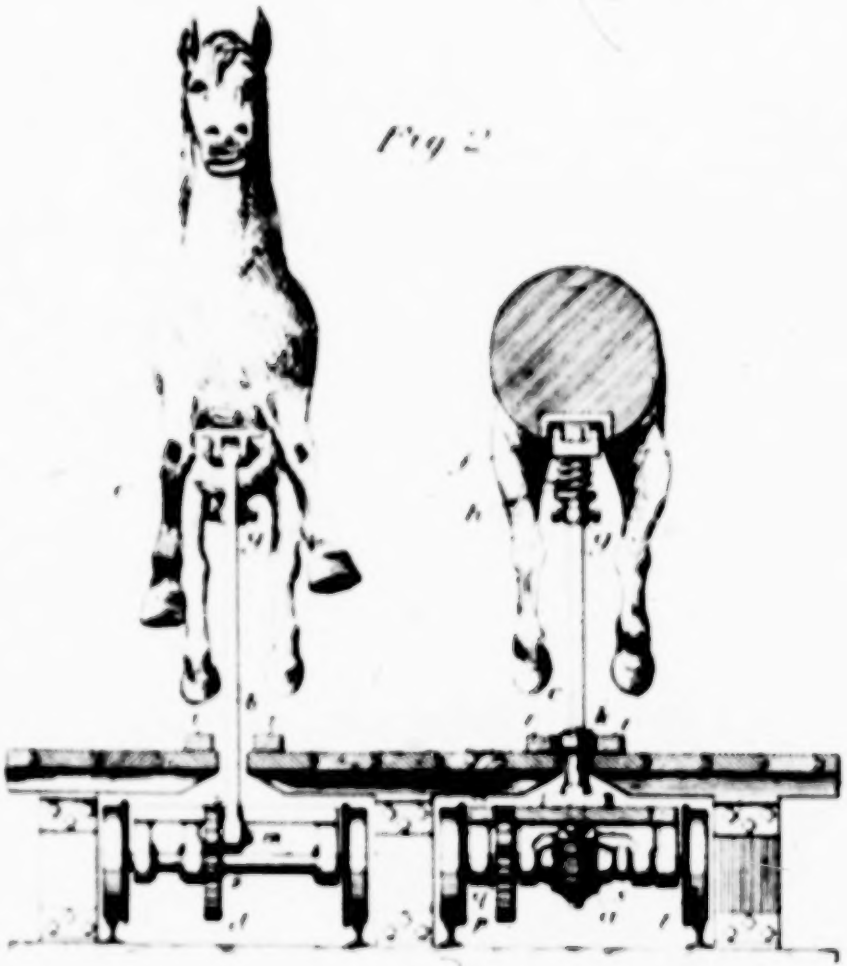


Fig. 2.

Witnesses:
[illegible]

Inventor:
James Washington Daniels
by Thomson & Henderson
Attys.

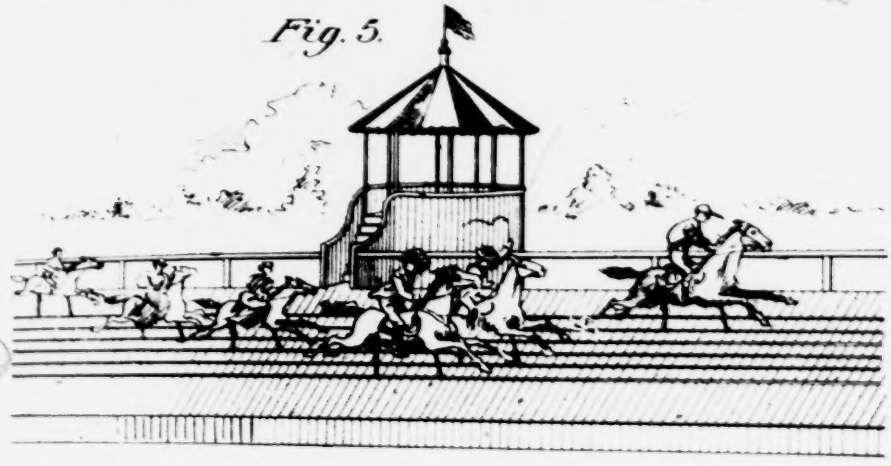
(No Model.) 3 Sheets--Sheet 3.

J. W. DANIELS.

ELECTRIC RACE HORSE CAROUSEL.

No. 583,109. Patented May 25, 1897.

Fig. 5.



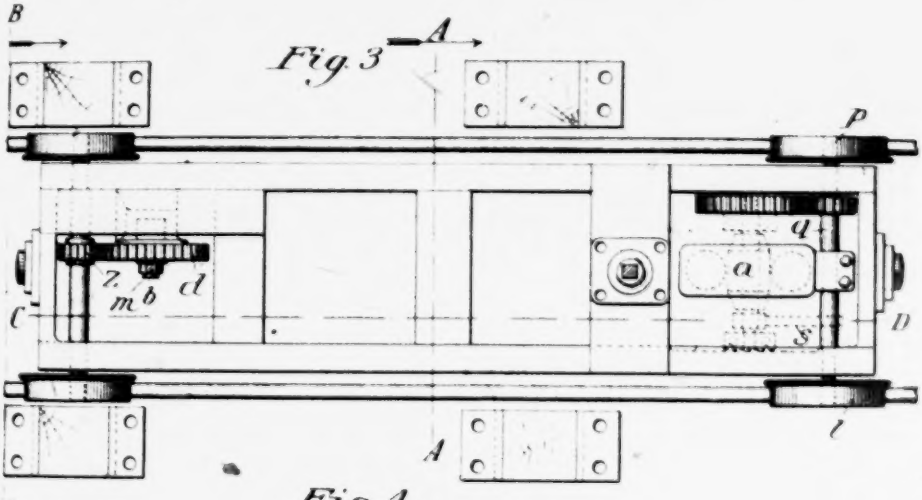
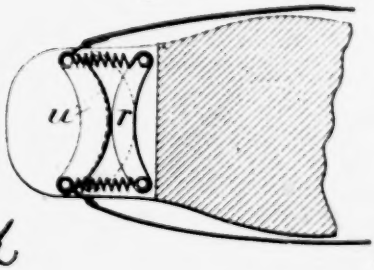


Fig. 3

Fig. 4.



Witnesses.
W. F. Gray
A. B. Smith

Inventor.
James Washington Daniels
by Thomson Jay Henderson
Atty.

[fol. 365] United States Patent Office

James Washington Daniels, of Paterson, New Jersey

Electric Race-horse Carousel

Specification Forming Part of Letters Patent No. 583,109, Dated May 25, 1897

Application Filed October 28, 1896. Serial No. 610,282. (No Model.)

To all whom it may concern:

Be it known that I, James Washington Daniels, a citizen of the United States, residing at Paterson, in the county of Passaic and State of New Jersey, have invented certain new and useful Electric Race-Horse Carousels, of which the following is a specification.

My invention relates to improvements in carousels or merry-go-rounds for racing purposes, in which the horse or other figure is under control of the rider as to speed and stopping and starting; and the objects of my improvements are, first, to provide an electrical motor for operating all of the horses simultaneously from a single battery; second, to provide an independent motor mechanism for each horse, and, third, to provide means for enabling the rider of each horse to control the starting, stopping, and speed of the horse. I attain these objects by the mechanism illustrated in the accompanying drawings, in which

Figure 1 is a side elevation of a horse and a sectional view of the truck on lines C D of Fig. 3. Fig. 2 is a front representation of the horse and a sectional view of the truck on lines B B of Fig. 3 and a sectional view of the horse and truck on the lines A A of Fig. 3. Fig. 3 is a top plan view of the truck with the horse removed; and Fig. 4 is a view of the horse's head, partly broken away, showing the mechanism for controlling the flow of electricity to the motor mechanism. Fig. 5 is a perspective view of the apparatus, showing the slotted platform and the figures with their riders mounted thereon.

Similar letters refer to similar parts throughout the several views.

This apparatus consists of the ordinary slotted platform, built in circular or elliptical form, underneath which are trucks mounted upon railway-tracks in the usual manner.

The trucks in my invention are operated by electric gear-motors *a* (shown in Figs. 1, 2, and 3) suspended on the rear axle of said trucks. The wooden horses are supported on rods *b* and *c* and are connected in front to an adjustable gear-crank *d* and receiving an up-and-down motion therefrom when the truck is in motion. The back rod *c* rests rigidly on the truck. The body of the horse rests on the upper end of said rods on hinged brackets *e* and *f*. The rod *c* is rectangular in cross-section and is provided on the top by a hinge *t*, the upper part of which is attached to the body of the horse, which keeps said horse from lateral motion. The rest *g* of the spring *h* is rigidly fixed to the rod *c* by set-screws and supports the coil-spring *h*, which receives part of the energy of the rider's body while in motion on the horse's back. The lower part of the rod *c* rests on a rigid support *i* next to the top of the truck and has at a certain distance above the platform-slot a roller *k*, freely revolving between two guards near the slot, thus keeping the rod in vertical position. The electric current is fed through one rail, while the other serves to complete the circuit, the positive current entering the wheel *p* and axle *q*, which is insulated from the wheel *l*, and through sliding contact *s* on axle enters the commutator brushes and armature of the motor when the connection is made. The mechanism for making and breaking the circuit is shown in Fig. 4 and rests inside the horse's mouth. It is controlled by the rider by pulling on the reins, (clearly shown in said figure,) which are attached to segments *u* and *r*, said segments being connected by suitable wires to the electric mechanism. They are normally kept separate by insulated coiled springs, as shown in the drawings. In the front part of the truck a gear-wheel *d* is mounted, which meshes with a pinion *z*, which is rigidly attached to the front axle. Said gear-wheel has a wrist-pin *m* attached near its periphery, upon which is mounted the rod *b*, which supports the front part of the horse, by means of a jointed bracket *e*. The range of up-and-down movement of the horse is regulated by moving the wrist-pin *m* up or down in the slot *n* or gear-wheel *d*.

The truck receives its primary motion from the electric

motor on the rear axle; but by the mechanism just described the motion can be accelerated and the speed increased by action of the rider of the horse. By applying skilfully his own weight increases the momentum and enables one rider to get ahead of the others of his racing companions just in proportion to his skill and strength in manipulating the device. Another element which increases or diminishes the speed resides in the mechanism in the [fol. 366] horse's mouth for making and breaking the circuit, which may be increased or diminished at the will of the rider within certain limits by making the connection more or less complete. Another resultant object of this mechanism is to enable the rider to stop or start his horse at will by having under his control the circuit-breaking mechanism—pulling on the reins making the connection and slacking the reins breaking it, as is obvious from the drawings.

The four-wheel truck can be superseded by a two-wheel truck built on the bicycle system running on one rail only, which is the current-feeder to the motor placed on the back wheel, and the back current can be conducted through the roller *k* and one of the slot guardrails *r*. The current is to be supplied from a central station and may be of variable voltage, from seventy-five volts up, not exceeding two hundred volts, carried by carefully-insulated wires to the switch *u* and *r* in Fig. 4. The motor may be either a reduction-gear motor or a direct axle motor.

Having fully described my invention, what I claim, and desire to secure by Letters Patent, is—

1. In a carousel a series of horses or other figures adapted for riding and mounted upon suitable mechanisms carrying independent motors said motors deriving their power from a common source and each provided with auxiliary propelling mechanism for increasing its speed at the will of the rider independently of the other mechanisms in the series, substantially as set forth.

2. In a race-carousel the truck having the standard *c* with the horse or other figure adapted to be used as a seat for a rider pivotally mounted upon said standard, in combination with the standard *b* pivotally attached to the forward end of said figure and connected by its lower end to a

crank-pin mounted upon a gear-wheel for connecting said gear-wheel to the axle of the truck and provided with mechanism to enable the rider to increase or decrease the speed of the truck independent of the primary moving mechanism, substantially as described.

3. In a race-carousel the combination of the truck having the electric motor attached to the rear axle, the figure or horse mounted upon said truck with a circuit-breaking mechanism or switch mounted in the mouth of the said figure or horse and adapted to be operated by means of the reins, substantially as described.

4. In a race-carousel the combination with the truck of a rocking horse or other figure mounted thereon and adapted to propel said truck when a rocking motion is imparted to said horse, and provided with means to enable the rider to control the speed of said truck independently of the primary motive power normally propelling said truck, as and for the purpose set forth.

5. In a race-carousel the combination of a truck with a primary motive power attached thereto with an auxiliary motive power adapted to be operated by the rider to increase or decrease the speed of said truck independently of the primary motive power, substantially as described.

In testimony whereof I affix my signature in presence of two witnesses.

James Washington Daniels.

Witnesses: Thomson Jay Hudson, George W. Cox, Jr.

(Here follow drawings side folios 367-368 and 369-370)

No. 737,257. PATENTED AUG. 25, 1903.

G. MAJNO.

ELECTRIC FIELD GAME.

APPLICATION FILED MAR. 26, 1902.

NO MODEL. 2 SHEETS—SHEET 1

Fig. 1.

Fig. 2.

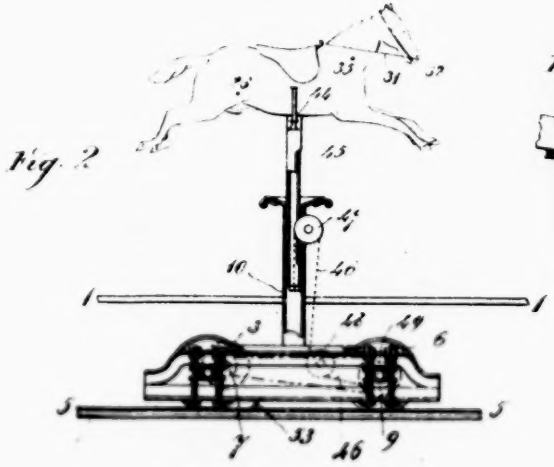
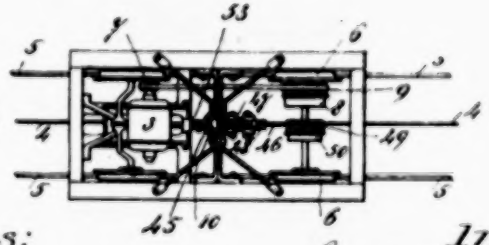


Fig. 4.

Fig. 3.



Witnesses:
P. F. Eagle.
L. Howville

Inventor:
Gerardo Majno.
By Wiedersheim & Fairbanks
Attorneys

369-370

No. 737,257 PATENTED AUG. 25, 1903.

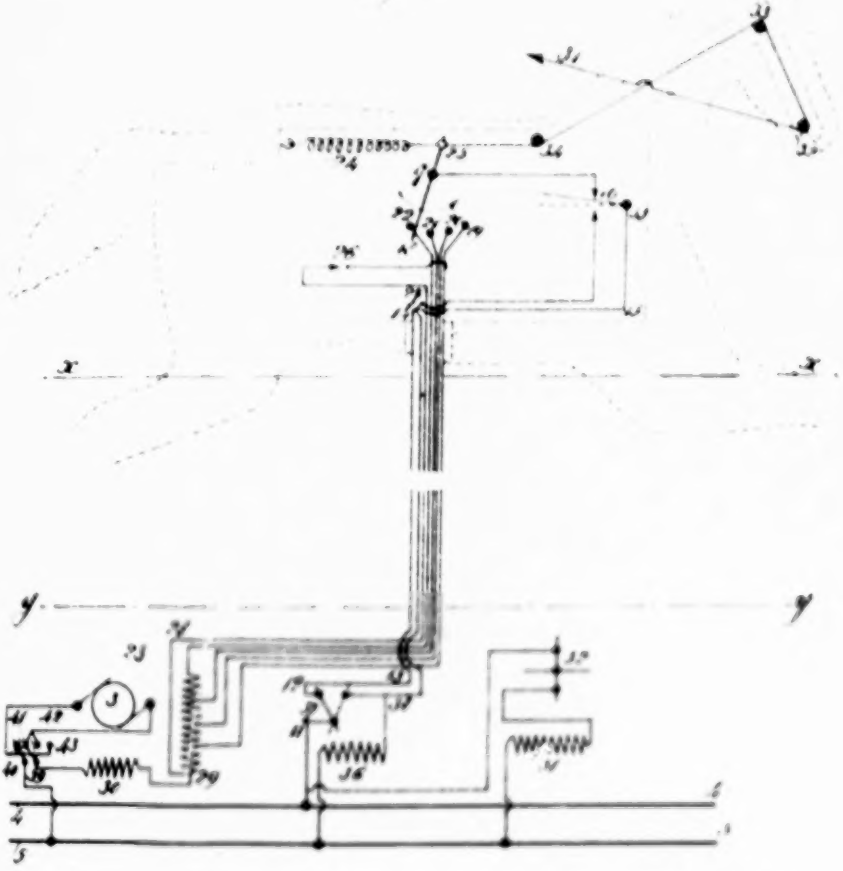
G. MAJNO.

ELECTRIC FIELD GAME.

APPLICATION FILED MAY 21, 1902.

NO MODEL. 2 SHEETS—SHEET 1.

Fig 3



Witnesses:
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L. Bouville.

By

Inventor
Gerardo Majno
Bidwell Sheridan & Mahon
Attorneys.

No. 737,257. Patented August 25, 1903

United States Patent Office

Gerardo Majno, of Milan, Italy

Electric Field Game

Specification Forming Part of Letters Patent No. 737,257, Dated August 25, 1903

Application Filed March 26, 1902. Serial No. 99,990. (No Model)

To all whom it may concern:

Be it known that I Gerardo Majno, gentleman, a subject of the King of Italy, residing at 9 Via S. Andrea, Milan, Italy, have invented new and useful Improvements in Electric Field Games; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same.

My invention refers to improvements in electric field games. According to it one or several cars are caused to run upon one or several tracks parallel to each other and having a preferably closed shape. Each car is fitted with a seat having the form of an animal, preferably a horse, and the person mounted on the back of the horse is with the aid of the electrical contrivances put at his disposal or worked by the attendants enabled to cause the artificial horse to imitate the movements of a living animal, so as to transform the whole arrangement into a race-ground for electric steeplechase.

The invention is shown by the accompanying drawings, of which—

Figure 1 is a perspective view of the whole arrangement. Fig. 2 is a side elevation of a car with the hore-shaped seat. Fig. 3 is a plan of the car. Fig. 4 is a detail view of the connection between the artificial horse and the post projecting upward from the car. Fig. 5 is a diagrammatic sketch of the electrical contrivances.

1 is the race-ground, in which as many slots 2 2 2 are provided as there are cars to be run, such slots being traversed by the posts 10, connecting each car with the corresponding seat or artificial horse, and therefore being arranged on a line standing vertically above the geometrical axis of each track. The motion is imparted to the car by means of an electric motor 3, receiving the current from the bar or wire 4, laid down in correspondence with the geometrical axis of the track 5 5, through a brush 53, sliding along said bar or wire 4. The driving-wheels 6 receive the motion from the motor through a couple of pulleys 7 9. The return of the current takes place through the rails 5 and the earth, as is usually the case with overhead-trolley railways. The means by which the different movements may be obtained, as well as the speed controlled, will be understood with reference to Fig. 5, which shows the parts contained within the body of the horse, the parts located within the post 10, (between the lines $x\ x$ and $y\ y$,) and the parts mounted on the car below the line $y\ y$. The current entering from 4 proceeds through 11 12 13 14 15 16 17 18 to the rheostatic controller, whose contacts are shown at 19 20 21 22, and the resistance-coils, divided into four sections, are shown at 23. The lever 25 18, fulcrumed at 17, is pulled by the spring 24 in the direction of the arrow and normally closes the circuit at 19, when all the sections but one of the resistance-coils 23 will be out of circuit and the speed will reach its maximum value under normal conditions. Should it be desired to simulate that the rider, spurring up his horse, pushes it forward with a violent rush a stud at 26 must be resorted to in order to close the circuit along 26 27 28 29, when the whole of the resistance-coils will be short-circuited and the armature of the motor attain a still greater speed than possible under normal circumstances. The current on leaving the resistance-coils 23 flows through the field magnet 30 of the series-wound motor 3, then proceeds through the winding of its armature, and discharges to earth through the rails 5.

The rheostatic controller-lever 25 18 is worked by the rider with the aid of the reins 31, entering the body of the horse through its mouth, turning around the small pulleys 32 33 34, and connected with an eye at the end 25

of the aforesaid lever. It will be easily understood that by reining up more and more resistance-coils are inserted and the speed correspondingly reduced, while when left to itself the horse will run at full speed—*i. e.*, the maximum speed under normal circumstances—the circuit being closed at contact 19 by means of the lever 25 18, acted upon by the spring 24. By pulling down the free end of the lever 16, fulcrumed at 35, the rider is at liberty to exert a braking action on the horse. The circuit feeding the motor is thereby interrupted and the current flows through the coil 36 of the electric brake 8, which, attracting the pulley 9, prevents it from turning and brings the driving-wheels 6 to rest. The braking action may be brought [fol. 372] about automatically at a given point of the path by causing the lever 37 to turn from the position shown in full lines to that shown in dotted lines, when the motor-circuit will be interrupted and the brake-coil circuit closed through 4 11 37 38 36 5.

The direction in which the horse is run may be reversed by means of the bipolar switch 39—*i. e.*, causing the circuit to be closed through the contacts 42 43, instead of through the contacts 40 41, as shown in full lines, Fig. 5. The horse, resting on the saddle 44, Figs. 2 and 4, which allows of a certain degree of lateral oscillation, is mounted on a spindle 45, which is capable of receiving a to-and-fro movement along the axis of the tubular post 10. During the normal running the spindle 45, as well as the horse, are in their undermost position; but they may be raised and brought to their uppermost position (shown in Fig. 2) by means of the rope 46, turning around the guide-pulleys 47 and 48 and winding itself around the pulley 49, which is loosely mounted on the axis of the driving-wheels 6, but may be made fast thereto by means of the electromagnetic clutch 50, Fig. 3. The magnetizing-coil of said clutch is shown at 51, Fig. 5. Its circuit may be either interrupted or closed by means of the switch 52, which is provided with two contacts and turns about ninety degrees on dashing against obstacles at predetermined points of the path. When the circuit of the coil 51, which was formerly interrupted, gets abruptly closed, clutch 50 will at once engage with pulley 49 and the horse will suddenly jump up, simulating the leap over the hedge. On

the circuit of coil 51 being interrupted again the weight of the horse will return it in its undermost position.

It will be understood that the revolution of the switch 52 upon its axis by the contact of either of its projecting arms with an obstacle on the ground may be utilized in many ways to open or close the shunt-circuit on which the magnetizing-coil 51 is included.

Having now described my invention and the manner in which the same is to be performed, what I claim is—

1. An electric game consisting of a race-ground with tracks situated below the same on which electrically-driven cars run, such cars carrying posts which go through slots provided for in the race-ground and carry horse-shaped seats for the rider who has at his disposal means for controlling the speed by acting on the reins and means within the supports of the seats for giving vertical to-and-fro movement to the seats.

2. An electric game consisting of a race-ground with tracks situated below the same on which electrically-driven cars run, such cars carrying posts which go through slots provided for in the race-ground and carry horse-shaped seats for the rider in combination with an arrangement as hereinbefore described under the control of reins carried by said seat and according to which the horse, when left to itself, runs full speed.

3. An electric game consisting of a race-ground with tracks situated below the same on which electrically-driven cars run, such cars carrying posts which go through slots provided for in the race-ground and carry horse-shaped seats for the rider in combination with means as hereinbefore described for obtaining a rush as if the horse had been spurred by his rider.

4. An electric game consisting of a race-ground with tracks situated below the same on which electrically-driven cars run, such cars carrying posts which go through slots provided for in the race-ground and carry horse-shaped seats for the rider, vertical slidable supports for said seat, an oscillating connection for each seat on said slidable support in combination with means as hereinbefore described for interrupting the circuit of the motor and actuating a brake.

Defendants' Exhibit No. 17 373-374

No. 811,284. PATENTED JAN. 30, 1906.

T. F. GAYNOR.

ELECTRIC RACE TRACK.

APPLICATION FILED MAR. 14, 1905.

5 SHEETS—SHEET 1.

Fig. 1

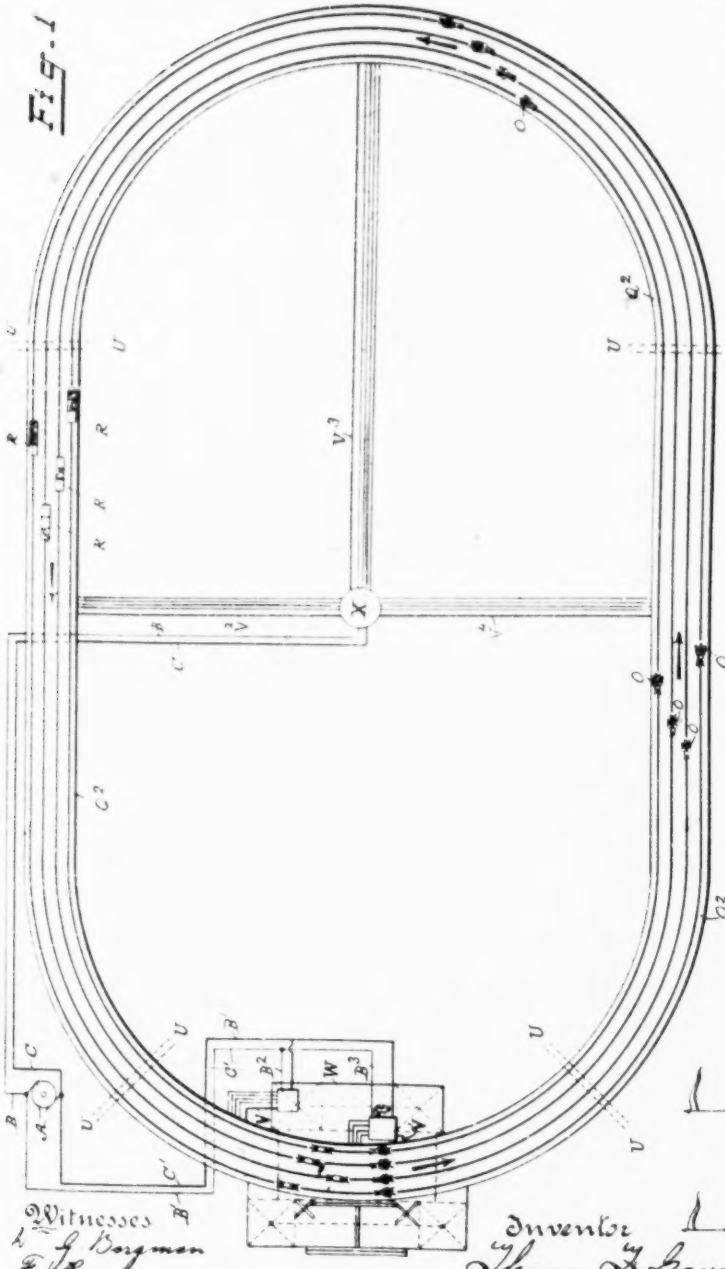
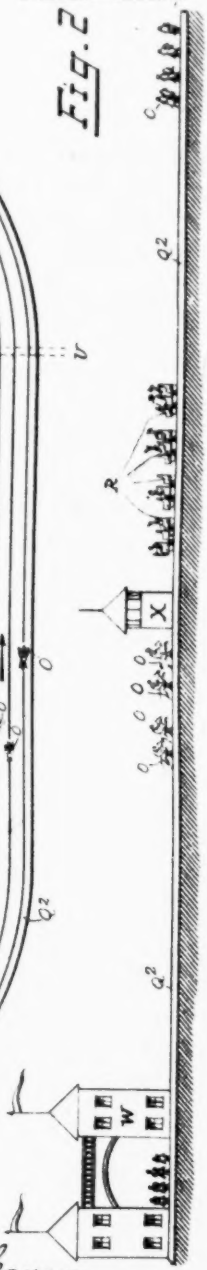


Fig. 2



Witnesses
L. Borgman
F. [illegible]

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Thomas F. Gaynor

375-376

No. 811,284. PATENTED JAN. 30, 1906.

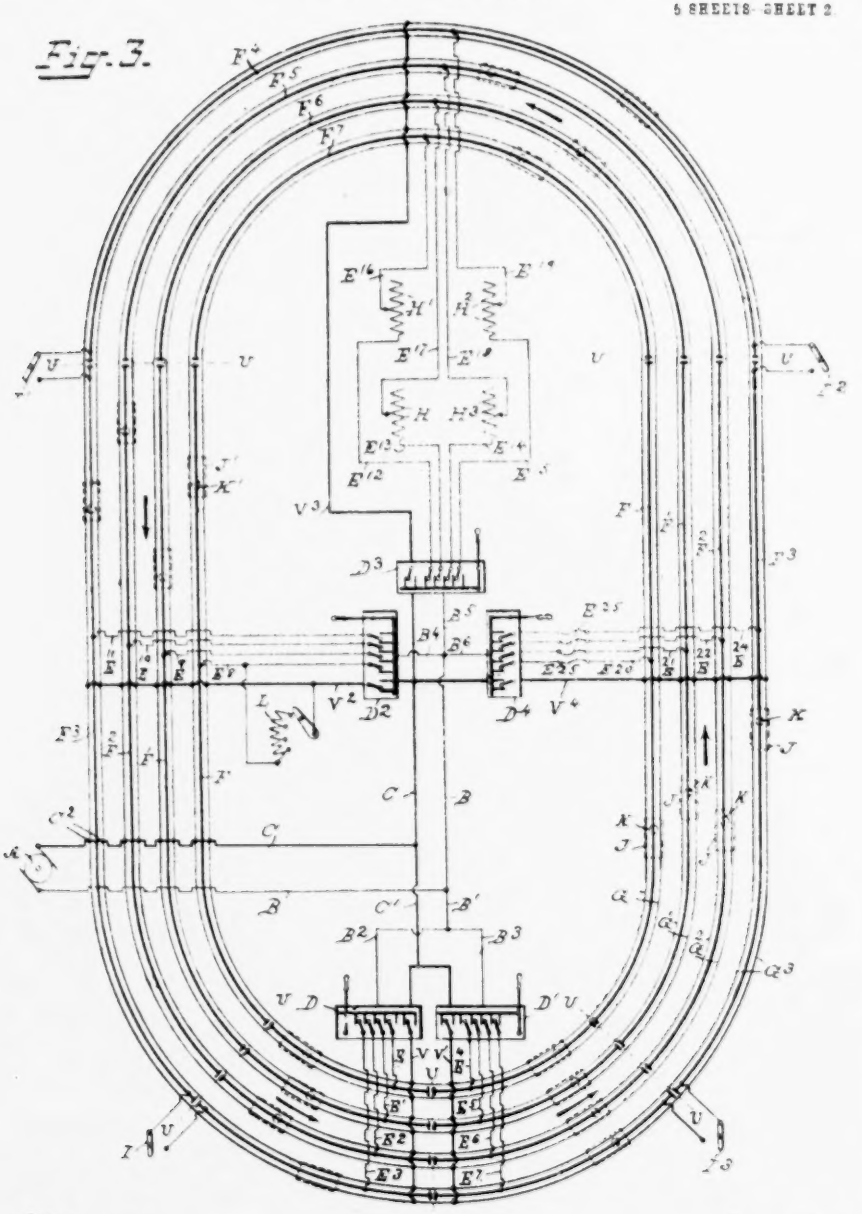
T. F. GAYNOR.

ELECTRIC RACE TRACK.

APPLICATION FILED MAR. 14, 1905.

5 SHEETS-SHEET 2.

Fig. 3.



Witnesses
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F. Adams

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377-378

No. 811,284. PATENTED JAN. 30, 1906

T. F. GAYNOR.

ELECTRIC RACE TRACK.

APPLICATION FILED MAR. 14, 1905.

5 SHEETS—SHEET 3.

Fig. 4

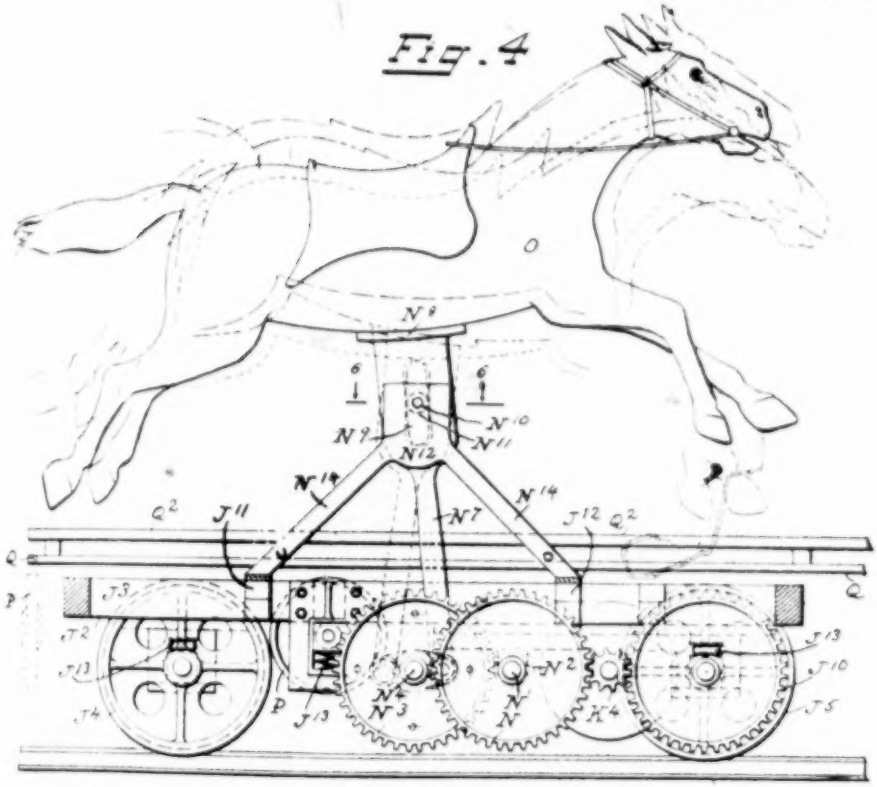

Fig. 5

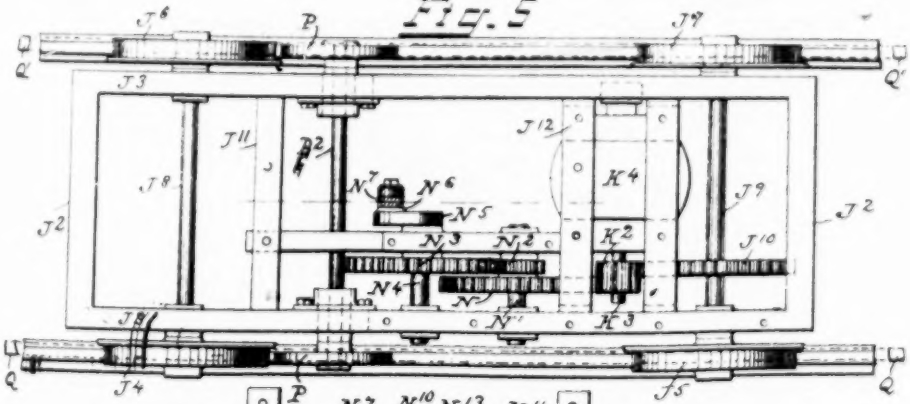

Fig. 6

Witnesses
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No. 811,284. PATENTED JAN. 30, 1906.

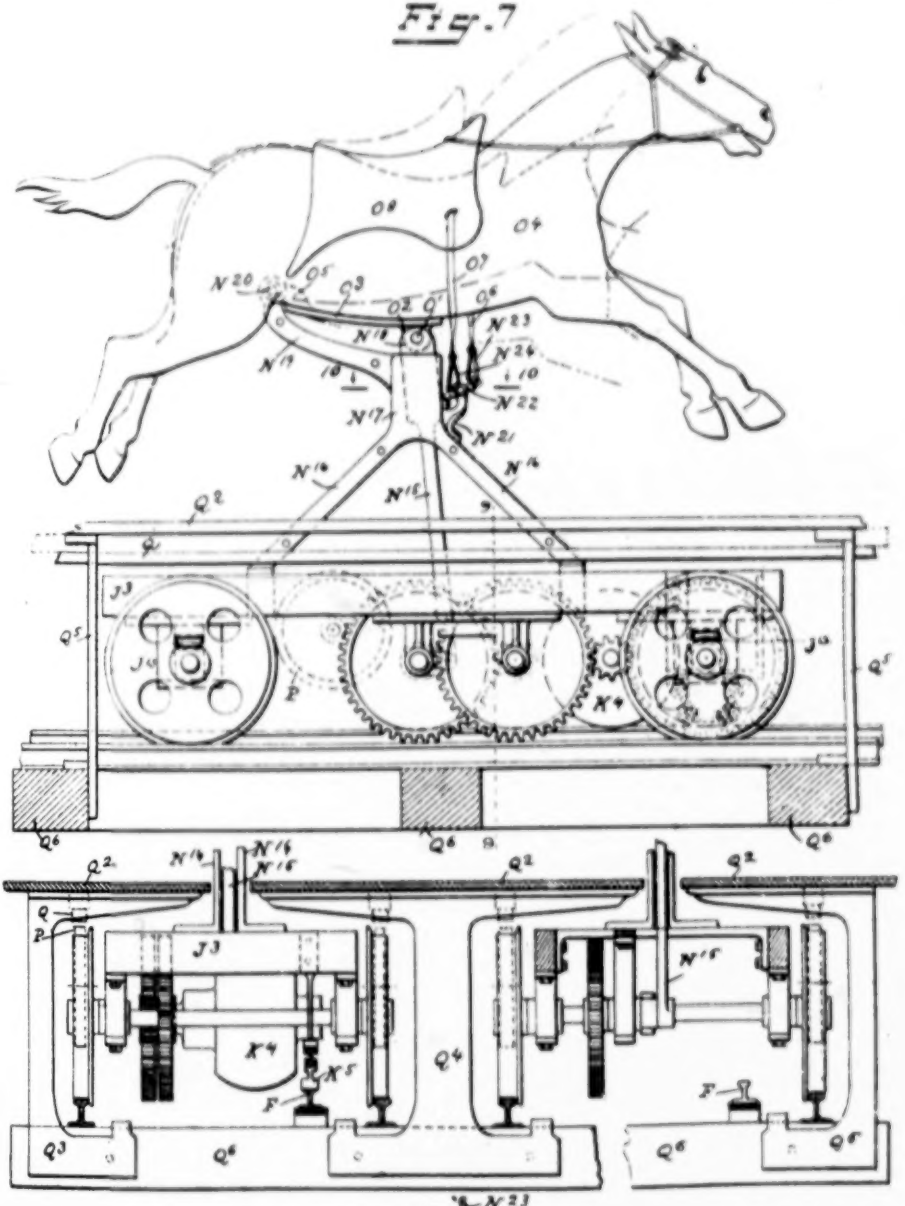
T. F. GAYNOR.

ELECTRIC RACE TRACK.

APPLICATION FILED MAR. 14, 1905.

5 SHEETS—SHEET 4.

Fig. 7



Witnesses
F. J. Bergmon
F. Harms.

Fig. 8

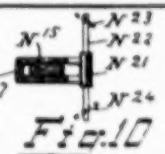


Fig. 10

Fig. 9

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by

No. 811,284. PATENTED JAN. 30, 1906.

T. F. GAYNOR.

ELECTRIC RACE TRACK.

APPLICATION FILED MAR. 14, 1905.

5 SHEETS-SHEET 5.

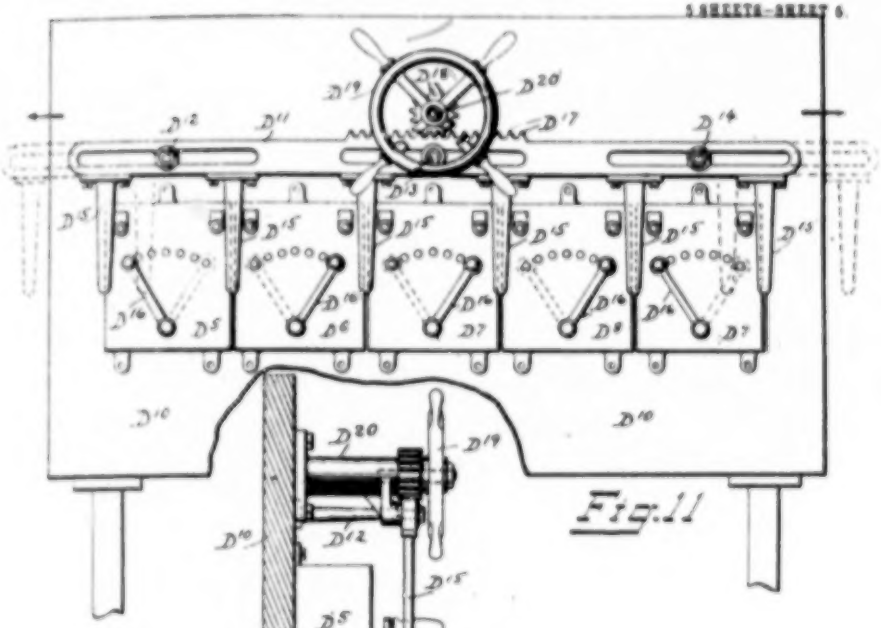


Fig. 11

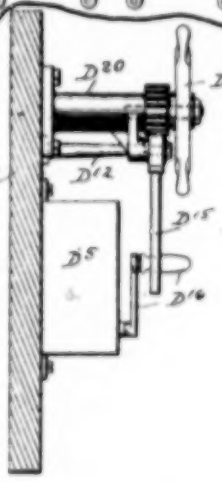


Fig. 12

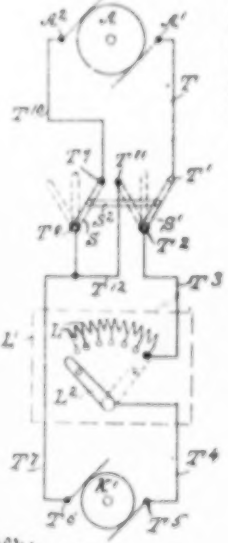


Fig. 13

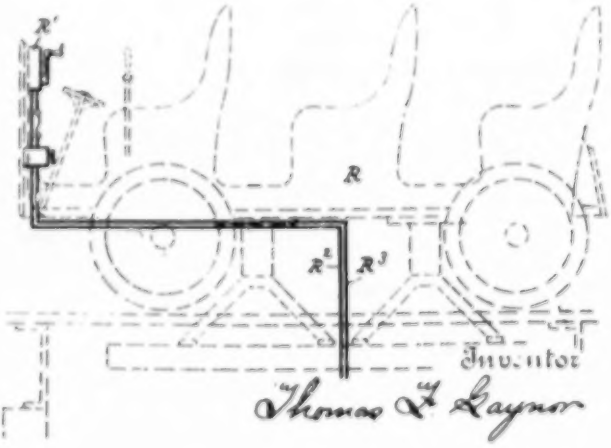


Fig. 14

Witnesses

Inventor

Thomas F. Gaynor

5. An electric game consisting of a race-ground with tracks situated below the same on which electrically-driven cars run, such cars carrying posts which go through slots provided for in the race-ground and carry horse-shaped seats for the rider and a vertical slidable spindle and tubular support for each seat to allow vertical to-and-fro movement of the seat in combination with means as hereinbefore described for causing the horse to suddenly jump up simulating the leap over the hedge.

In witness whereof I have hereunto set my hand in presence of two witnesses.

Gerardo Majno.

Witnesses: Michelede Drago, Virginio Carnevali.

(Here follow drawings, side folios 373-374, 375-376, 377-378, 379-380, and 381-382)

[fol. 383] United States Patent Office

Thomas F. Gaynor, of New York, N. Y., Assignor to Electric Amusement Company, a Corporation of New York

Electric Race-track

No. 811,284. Specification of Letters Patent. Patented Jan. 30, 1906

Application Filed March 14, 1905. Serial No. 250,043

To all whom it may concern:

Be it known that I, Thomas F. Gaynor, a citizen of the United States, and a resident of Brooklyn borough, New York city, in the county of Kings and State of New York, have invented certain new and useful Improvements in Electric Race-tracks, of which the following is a specification.

This invention relates to electric race-tracks; and it consists in constructing a series of electric railways each having proper conductor connections with a stationary generator, so that trucks carrying ridable figures and pro-

pelling-motors may be run upon the tracks and their movements thereon controlled by means of circuit-controllers located at stationary operating-points within visible distance from the tracks by operators in charge of the course and the figures of animal form, as a horse or the like, and being given life-like movements and adapted to be ridden upon by persons and in competition with each other over the course, as though in a race or the like, and which is an object of the invention.

The invention also consists in the special construction and combination of the electric-power system of distribution from the generator to the truck-motors, including the current-controlling mechanisms, the circuit-resistances, the motor-braking appliances, the sectional construction of the contact-conductors and return-conductors, and their respective branch connections hereinafter described.

It also consists in the novel construction of the mechanisms provided to give the figures movements resembling those of the animals represented and in the means employed through which the riders can by the proper exertion of their limbs accelerate the speed of the trucks they are riding upon through suitable connections with their respective truck-motors, and thus enable the riders to compete with each other in winning in a race when so desired. Its nature will be also pointed out more specifically in the claims hereinafter set forth.

The nature and objects of this invention will be more fully understood from the following specification, taken in connection with the accompanying drawings, and in which similar letters refer to similar parts throughout the several views.

Referring to the drawings, Figure 1 is a general plan view of my improved electric race-track. Fig. 2 is a side elevation of Fig. 1. Fig. 3 is a diagrammatic electric plan view of Fig. 1. Fig. 4 is a side elevation of one of the ridable figures with its truck and propelling mechanism Fig. 5 is a plan view of the truck and propelling mechanism seen in Fig. 4. Fig. 6 is a horizontal section of Fig. 4 on the line 6 6. Fig. 7 is a side elevation of a modified construction of a ridable figure and its truck mechanism. Figs. 8 and 9 are vertical end views of Fig. 7 looking from right to left and through line 9 9, respec-

tively. Fig. 10 is a horizontal section on line 10 10, Fig. 7. Fig. 11 is a front elevation of a set of current-controllers and a master-controller, as shown diagrammatically in Fig. 3 in five places therein. Fig. 12 is a side elevation of Fig. 11. Fig. 13 is a side elevation, in dotted outline, of a car which can be mounted on a truck instead of an animal figure and provided with current-controlling devices. Fig. 14 is a diagram of the electrical connections of a generator, a truck-motor, and the intermediate switch and rheostat devices, partly seen in the left central portion of Fig. 3.

In the drawings, Fig. 1 represented a plan view of an electric race-track made according to my invention and in which a course of four railroad-tracks of an elliptical form is shown. Several groups of riders are shown in different racing positions at different points around on the course, including a group of four riders ready to make a start and four horses which have finished in a race, the latter two groups being at the grandstand or starting-point, and a plan of which is also shown. The electrical connections between the generator and the operating-points at which the movements of the trucks are controlled around the course is also shown in this figure. Only the top view of the course is visible, however, and which consists of a false floor or platform which is arranged over the track-rails and trucks, but under the figures or vehicles, which [fol. 384] are connected to the trucks by suitable standards which move in slits in the platform and which are seen in this figure.

Fig. 2 is a side elevation of Fig. 1 and gives a view of the several groups or riders as seen in Fig. 1 in their respective positions around upon the course.

Fig. 3 is a diagrammatic plan view of the several railroad-tracks comprising the course illustrated in Figs. 1 and 2. This figure shows the track-rails and contact-conductors of the several tracks and five groups of trucks, each of which has a motor and indicated by dotted outlines in their several respective positions upon the tracks. It also shows the power-generator, the feed and return conductors, and the controlling devices through which the current can be supplied to the truck-motors and its control regulated at the operating-points near and within visible

distance from the tracks by the persons in charge of the system. This figure also shows variable-resistance mechanisms through which the amount of electricity supplied to the several trucks can be so regulated that the difference in the lengths of the several tracks at their curved portions due to the increased radial dimensions as they extend outwardly from their common center can be so proportioned and compensated with the requisite power that the riders traveling upon the outer tracks can keep abreast of those upon the innermost track and have an equal chance to win a race. These resistance devices are especially adapted for the curved portions of the course, as upon the straight portions the distance to be traveled over by the riders is the same upon all the tracks, and consequently the amount of power supplied to the different trucks in the straight portions of the trucks can be the same. The contact-conductors in this figure are shown as divided into several sections, which are insulated from each other to make the system operative, as will be explained more fully hereinafter. In this figure a motor-braking mechanism is also shown as provided for stopping the movement of a contiguous moving truck after the power has been shut off from the latter by the operator and consisting of a resistance device which is connected up in circuit with the motor after the current-supply has been shut off from the latter, the connections for which will be more fully explained hereinafter. The outer track is also shown as provided with circuit-closers and through which its contact-conductor sections can be connected up, so as to be integral electrically when such an arrangement may be desired, and which arrangement of circuit-closers can of course be applied to any or all of the other tracks. The motor-braking mechanism shown in this figure can likewise be applied to any or all of the sections of a track or tracks, as can also be understood.

Fig. 4 is a vertical sectional and side elevation view of a truck, its motor mechanism, and gearing arrangement through which the truck is propelled over the track and by which motion is imparted to the animal figure mounted upon the truck by means of the standard shown, and which figure is that of a horse in the act of galloping over a race-course. This figure also shows a view of a portion

of the platform and a safety-rail thereunder and against which one of two guard-wheels on the truck is adapted to run in case the truck-wheels should through any cause rise from the track-rails while in motion, thereby preventing the truck from being derailed or the like. This figure also shows a compound motion that is imparted to the horse by a crank and connecting-rod arrangement that by means of which not only do the front and back portions of the horse rise and fall alternately, but also the whole body rises and falls, thus simulating the natural movements of the living animal represented during a galloping movement over a race-track or the like.

Fig. 5 is a plan view of the truck, showing Fig. 4 with its motor mechanism and gearing-trains and guard-wheels.

Fig. 6 is a horizontal section of the connecting-rod and supporting-standards on the line 6 6 in Fig. 4.

Fig. 7 shows a modification in side elevation of the crank and connecting-rod mechanism and supporting-standards for supporting the horse and giving it motion, as illustrated in Figs. 4 and 5, only that but a single up-and-down motion is given to the horse thereby and that the latter is trunnioned upon the standard and the connecting mechanism to make this motion operative. In this figure a bracket is shown connected to the standard and to which the stirrups are attached and which are also suspended to suitable elastic webbing straps, which are suspended by their upper ends from the horse in the usual manner of saddle construction. This stirrup connection with the standard is for the purpose of enabling the rider to support the weight of his body thereon, or vice versa, as the body of the horse rises and falls while the truck is in motion, and so that during the upstroke of the connecting-rod his weight can be partly or entirely removed therefrom, while during the downstroke of the rod his weight can be added to that of a horse, thus through the intermediate gearing adding to the power of the motor, and thereby aiding the latter in accelerating the speed of the device over the track. This figure also shows the platform-supports and their relation with reference to the ties of the railway.

Fig. 8 is a vertical end view of a truck, as seen in Fig. 7, as viewed from right to left, with motor and gear mecha-

nism, the contact-conductor, and current collector or shoe, as indicated by dotted lines in Fig. 7. This figure also [fol. 385] shows the front view of two of the platform-supports, the one to the left being that adapted for use at the edge of the platform and the one to the right being one of such as are suitable for supporting one of the portions of the platform between two of the tracks. This figure also shows the relation of the standard and connecting-rod mechanism supporting and operating the horse with reference to the slit in the platform.

Fig. 9 is a vertical and sectional view of Fig. 7 on the line 9 9 of Fig. 7, showing the crank-shaft mechanism through which motion is transmitted to the horse carried by the platform.

Fig. 10 is a horizontal sectional view through the standard and connecting-rod and of the stirrup-supporting device on the line 10 10 in Fig. 7.

Fig. 11 is a front elevation of a group of current-controllers and a master-controller by means of which the movement of the trucks can be controlled, as indicated diagrammatically in Fig. 3. This figure shows five rheostat-controllers of usual construction and as mounted in line with each other upon a suitable support under the projecting fingers of the master-controller, so that any one or all of the rheostats can be operated at will independently of each other regardless of the master-controller, the fingers of which are in non-interfering positions with reference to the rheostats to permit this being done. When it is necessary to move all the rheostats synchronously, so as to start and stop their controlling truck mechanisms simultaneously, however, this result can be attained by the proper manipulation of the rack-and-pinion arrangement of the master-controller, the dotted lines to the left indicating the limit of travel of the master-controller in that direction after the act of cutting off the current by the rheostats, while the dotted lines to the right indicate the limit of movement of the master-controller after throwing the rheostat-handles to the position of full current-supply through these devices.

Fig. 12 is a side elevation of Fig. 11 and of the master-controller and rheostats.

Fig. 13 shows in dotted lines how a vehicle can be mounted upon a truck and provided with a controlling mechanism ac-

cessible to the rider therein, as in an automobile or the like, the electrical connections of the controller being shown in full lines and as leading to the motor mechanism of the truck, which is not shown, but being similar to that shown in some of the other figures and as can be understood without illustration.

Fig. 14 represents a diagram of the switch, rheostat, and circuit connections between the power-generator and the truck-motor, which is also shown in Fig. 3 in part. This figure shows how the circuit supplying the power from the generator to the motor can be established through the double switch and the rheostat in the usual manner of such connection, how by moving the switch into the vertical (cut-out) position the generator-conductors can be disconnected from the motor, and when the switches are thrown into the oblique (left) position a circuit can be established between the terminals of the motor and through the rheostat when the handle of the latter is brought in contact with the terminal connections of the resistance-coils, thus bringing the latter into circuit with the motor-terminals, and thereby loading the motor electrically, with the resistance thus established whenever the motor is running without connection with the generator, and thus for the time being acting as a generator of current itself. The loading of the motor in this manner is effected by moving the rheostat-handle from the position shown in full lines toward the right and onto the first or the nearest of the resistance-terminals, and in that position the maximum resistance is brought into circuit with the motor and of course the minimum load is put upon it electrically, this being an operation exactly the same as that employed in connecting the motor with the generators as ordinarily employed in starting motors from the stationary condition.

The full nature of this device will be more fully explained hereinafter.

In the drawings, A represents a stationary electric-power generator having the feed-conductors B B′ and return-conductors C C′, connected with its terminals in the usual manner.

The feed-conductors B B′ are connected through the branch connections B^2 B^3 B^4 B^5 B^6 and corresponding controllers D D′ D^2 D^3 D^4 and the intermediate branch connec-

tions E, E', E², E³, E⁴, E⁵, E⁶, E⁷, E⁸, E⁹, E¹⁰, E¹¹, E¹², E¹³, E¹⁴, E¹⁵, E¹⁶, E¹⁷, E¹⁸, and E²⁰, E²¹, E²², E²³ with the contact-conductors F' F² F³ F⁴ parallel with and in proximity to the rail G G G' G' G² G² G³ G³ comprising the several tracks of the system.

H H' H² H³ represent variable-resistance devices that are interposed in the respective branch connections between the controller D' and the corresponding sections F' F² F³ F⁴ of the contact-conductors of the curved portions of the several tracks at the upper end of the course.

I I' I² I³ represent cut-out switches and through which the contact-conductor sections of the outer-track contact-conductor may be connected together or disconnected, as desired.

J J J J represent the wheeled trucks adapted to run upon the respective tracks each being provided with an electric motor K, through means of which it is propelled along the [fol. 386] track in the usual manner of electric-railway-traction mechanism.

L represents a motor braking and controlling rheostat device through which a braking effect can be produced upon the motor of the truck running in its contiguous section of the track—as, for instance, that of the truck J, with its motor K—and which construction will be more fully understood by referring to Fig. 14, in which all the circuit connections and switch devices between the motor and the generator are fully illustrated and as will be more fully described hereinafter.

Referring to Figs. 4 and 5, a truck J² is shown of the ordinary construction comprising the frame J³, mounted upon the wheels J⁴ J⁵ J⁶ J⁷ through their respective axles J⁸ J⁹ in the usual manner of such devices. The forward axle J⁸ of the truck has mounted thereon the gear J¹⁰, which engages with the pinion K², mounted upon the shaft K³ of the motor K' in the usual manner and through which the power of the motor is transmitted to the wheels J⁵ J⁷, thereby giving traction motion to the truck. The pinion K² also engages with a gear N, mounted upon the shaft N', also carrying a pinion N², which engages a gear N³, mounted upon the crank-shaft N⁴, to which the crank N⁵, having the crank-pin N⁶, is secured and by means of which through a connecting-rod N⁷ a compound rocking motion is posi-

tively and dependently imparted to the horse O, secured thereto by the flange X^5 and as indicated by the different positions of the figure shown in full and in dotted lines. The upper part of the connecting-rod X^7 is provided with a vertical transverse slit X^8, which plays up and down upon a wrist-pin X^{10}, having a roller X^{11}, and the pin being rigidly secured to the two walls X^{12} X^{13} of a standard X^{14}, which is rigidly mounted to the cross-pieces J^{11} J^{12} of the framework of the truck. This arrangement of the upper portion of the connecting-rod X^7 between the portions X^{12} X^{13} of the standard serves as a lateral guide for the up and down movements of the connecting-rod and the super-imposed horse, giving steadiness of motion to the latter, while maintaining fixity of position like the cross-head and guide arrangement of an engine or the like and as can be understood without further description. The truck is also provided with a pair of guard-wheels P P', mounted upon an axle P^2, and which are adapted to run against corresponding overhead rails Q Q', one of which is shown at the left-hand edge of Fig. 4 in section and which are secured to the platform Q^2 for this purpose. The guard-wheels P P', however, ordinarily run clear of the guard-rails, as thus indicated; but in case of any accidental uplifting of the truck-wheels from the track, as might occur in case the truck was propelled at an excessive rate of speed while going around a curve or the like, then the guard-wheels will run against the guard-rails, thus preventing a derailment of the truck.

In Fig. 7 the connecting-rod X^{15} has a crank and driving-gear mechanism connected with the motor similar to that described and shown in Figs. 4 and 5, and the standard X^{16}, with its upper end X^{17}, is of substantially similar construction to that shown in said figure. The upper extremity X^{18} of the connecting-rod X^{15}, however, is trunnioned upon a wrist-pin O' in the lug O^2, projecting from the support O^3, carrying the horse O^4, thus making the connecting-rod X^{15} a pitman in operation. The standard X^{16} is provided with a bracket X^{19}, having a trunnion-pin X^{20} at its upper extremity and upon which the lug O^5 of the support O^3, carrying the horse O^4, is trunnioned. This arrangement provides means for giving a vertical rocking motion to the horse by the rotation of the motor and upon the pin X^{20}, and the limit of the motion being indicated by dotted lines in the figure.

The standard X^{16} has a bracket X^{21} secured thereto, which carries the cross-bar X^{22}, to which the stirrups X^{23} X^{24} are connected and the upper ends of which are connected to the elastic straps O^6 O^7, which are connected to the saddle O^5 over the back of the horse O^4. This construction enables the rider to place his weight upon the stirrups or upon the saddle alternately and to any degree desired, thereby bringing his weight upon the crank-pin during its downstroke and, vice versa, on the upstroke, so as to aid the motor in accelerating the speed of the truck in this manner. Springs J^{13} J^{13} J^{13} are shown in Figs. 4 and 7 over the journal-boxes to give an elastic riding motion to the horse and the truck; but other spring applications can be added or substituted, as can be understood. The false floor or platform Q^2 between the truck and the horse is supported in position by means of uprights Q^3 Q^4 Q^5, secured to the ties Q^6 Q^7, as can be understood by the description. The platform-sections are arranged so as to cover from view the trucks, making a false flooring, above which only the horses and their supporting-standards are visible, so that an appearance is given to observers as if the horses were running around the course upon the platform, only the feet of the figures being at all times clear of the platform, as can be understood, and to produce which effect, as well as to protect the riders from ever falling upon the trucks or tracks in case of an accident, are the main purposes of the platform.

The contact-conductor is shown in the larger figures as consisting of a rail F, insulated at its base in the usual manner, and the current is collected therefrom by means of a contact collector or shoe K^5, having the proper elec- [fol. 387] trical connections with the motor, so as to bring the latter into circuit when desired.

D^5 D^6 D^7 D^8 D^9 show a group of current-controllers having resistance-coils and terminal connections of the ordinary construction of such devices. They are mounted in line together upon the support D^{10} and upon which the master-controller D^{11} is also mounted by means of the studs D^{12} D^{13} D^{14}, which are secured thereto. Fingers D^{15} D^{15} D^{15} are secured to the master-controller D^{11} and arranged in such position with reference to the controller-handles D^{16} D^{16} as to move the handles in either direction to the full extent of their sweep synchronously whenever this is desired, while permitting of the free and independent manipulation of the

handles separately whenever this is to be done. Motion is imparted to the master-controller D^{11} by means of a toothed section D^{17}, which engages with the pinion D^{18}, having the hand-wheel D^{19} attached thereto and being mounted upon a stud D^{20}, which is secured to the upright D^{16}, like the smaller studs D^{12} D^{13} D^{14}. The multiple controller is for the purpose of controlling the movement of a group of riders or any one of them, as may be desired, and illustrates the construction of the devices that are shown in Fig. 3 diagrammatically at D D′ D^2 D^3 D^4.

In Fig. 13 the vehicle device R (shown in dotted lines) illustrates how a number of persons can be carried upon a single truck and how an operator seated therein can be provided with means for controlling the movement of the vehicle while seated therein and which consists of the controller R′ and having the proper connections R^2 R^3 with the motor with the accessory appliances of an automobile at his command, if such an arrangement is desired.

In Fig. 14, L represents the rheostat portion of a controller L^2, having the controller-handle L^3 of ordinary construction.

S S′ represent a pair of circuit-closers connected together by the connection S^2 and which serve for connecting up the truck-motor K′ through the controller L′ with the generator A, and the necessary intermediate conductors being also shown.

The circuit is established from the generator A to the motor K′ as follows: from terminal A′ through conductor T, terminal T′, circuit-closer S′, terminal T^2, conductor T^3, rheostat L, rheostat-handle L^3, and conductor T^4 to the terminal T^5 of the motor K′. The return-path of the circuit is, beginning at the terminal T^6, the return-conductor T^7, the switch-terminal T^8, and switch S, the terminal T^9, conductor T^{10}, and terminal A^2 of the generator A. The rheostat-handle L^3 in the position shown in full lines of course opens the circuit which is established when it is brought against the nearest terminal of the rheostat L and then as it is advanced gradually to the position shown in dotted lines when the rheostat is short-circuited after the motor K′ has attained its full speed. If any intermediate speed of the motor K′ is desired, it may be obtained by bringing the handle L^3 to the proper rheostat-terminal that will inter-

pose the requisite resistance in the circuit to give the result.

When the switches are moved into the vertical position, as indicated by the dotted lines, the conductor T T^{10} are disconnected from the motor K′, and the latter thus losing its power will when running soon come to a stand with its truck; but as emergencies may arise in which the truck should be stopped as quickly as possible this result can be attained by throwing the switches to the extreme left position (indicated by the dotted lines) and which establishes a motor-circuit as follows: from the motor-terminal T^5, conductor T^1, controller-handle L^2, rheostat L, conductor T^3, terminal T^2, switch S′, terminal T^{11}, conductor T^{12}, conductor T^7, to motor-terminal T^6. By this arrangement it can be seen that the controller L′ may be used in the usual manner of such devices in gradually turning on the current and starting the truck-motor K′ and when the latter is to be stopped that the controller also acts in interposing a resistance in the alternative circuit, in which the motor is connected by the proper manipulation of the rheostat-handle L^2 and the switches S S′, as described, so that whatever counter electromotive force may be generated by the motor while it is running (after its power has been shut off) and until it stops is expended in driving current through the resistance of the rheostat L, which by loading the motor electrically in this way acts as a brake in quickly stopping the motor and through the latter the movement of the truck itself with the rider thereon, this being one of the important novel features of this invention.

It will be observed that the contact-conductors of the whole course are divided transversely into several sections, as indicated by dotted lines U U U U U in Figs. 1 and 3, and that each group of sections of the contact-conductors has corresponding return branch conductors V V' V^2 V^3 V^4, connecting with their respective controllers D D' D^2 D^3 D^4, which are stationed at the operating-points within visible distance from the tracks. These return branch conductors are for the purpose of establishing a temporary braking-circuit with the truck-motors to make the braking operation effective, as described.

The return-conductor C can also be connected with the track-rails in the usual manner of electric-railway construction and as indicated at C^2 C^2 near the generator A in Fig.

[fol. 388] 3. The contact-conductor sections of each track may of course be connected together, so as to make them integral electrically, by means of the cut-out switches I I' I^2 I^3, as shown, connecting the sections of the contact-conductor of the outer track in Fig. 3, as already described.

Ordinarily the short sections of the contact-conductors of the several tracks immediately behind the home starting-station W and controlled by the controller D are left cut out of circuit and dead electrically, so that the motors of the trucks when the latter reach these sections on the home stretch of a race thus lose their propelling power and the trucks come to a stand before reaching the starting-point, so as to enable the riders to dismount at the grand stand or starting-station W. The trucks can then be moved forward by the attendant in charge, so as to come upon the contiguous starting portion of the course, the tracks of which are controlled by the controller D' electrically, and when the new riders are mounted upon their respective horses in proper starting-line with each other, as indicated in Figs. 1 and 2, within the grand stand the power can be synchronously applied to all of the respective trucks by the proper manipulation of controller D', and thereby giving an equal start to the whole group of riders. When the riders thus started off reach the next section of the course, their movements thereupon are controlled by the operator at the central operating-station X within the course and in visible distance therefrom and who also can control them around upon the course as they reach each of the other sections thereof successively until the home or stopping section is finally reached and the race thus finished. By this arrangement it can be seen that the movement of the trucks around the course can be completely controlled and regulated by the operators in charge of the controllers at the stationary operating-points and as effectively as could be done if each of the riders had individual means of controlling the power at hand while riding upon his mount, and the operators have full control of all the riders upon the whole course at the same time, which is a great advantage.

The difference in the lengths of the curved portions of the tracks can be compensated so that each rider can have sufficient power supplied to his respective motor to enable

him to keep abreast of his competitors in the race by means of the manipulation of the controllers D^2 D^3 D^4 by the operator in charge thereof or else through the interposition of the variable resistances H H′ H^2 H^3, as already described. Moreover, the operator can increase or retard the speed of any of the riders at will through the said means at any time, if so desired.

Fuses E^{25} E^{25} E^{25} E^{25} can be inserted in the feed branch wires of the system, as indicated in the branches E^{20} E^{21} E^{22} E^{23}, as a precaution against accidental short-circuiting of the system. (See Fig. 3.)

The truck-driving axle and the crank-shaft figure-actuating mechanism by being both geared to the motor-shaft provides a positive and direct interdependence of elements having advantages not possessed by devices of this class in which the crank mechanism is connected to one axle of the truck and the motor mechanism to the other axle and the two elements thus being independent of each other—that is, where the crank is independent of the primary moving mechanism. In such devices it has been found that the oscillatory vertical movements of the figure and the rider thereon have so affected the end of the truck to which the crank was connected as to cause the corresponding wheels to rise from the track and a liability of derailing the truck and injury to the rider as a consequence.

In this invention it will be noticed that the crank mechanism and the standard supporting the figure are arranged in the middle of the truck and the weight of the figure (and that of a rider, if properly mounted thereon) is thus better distributed upon all the truck-wheels than can be done upon said devices. Moreover, the power is directly and positively transmitted from the motor to the figure, and vice versa and interdependently, while in the devices referred to the power transmission is only through the axles and wheels and the tractional friction of the latter upon the track-rails, with a consequent liability of slippage thereon, and the motor and crank mechanism are mechanically independent of each other, which arrangement is objectionable.

From the foregoing description of the system the nature and the operation of this invention can be understood without further explanation. This invention can be constructed in the usual manner of electric-railway construction and of

materials ordinarily thus employed. A race-course can be constructed of any shape or dimensions and of any number of tracks desired and containing all or any part of the mechanisms and combinations of elements herein described and illustrated. Figures and vehicles of any suitable design can be mounted upon the trucks and proper movements imparted thereto and made to travel around over the course in substantially the manner described, thus giving a great range of applicability to this invention.

It can thus be seen that I provide a simple and complete system and apparatus for the purposes intended and meeting all the requirements of such an invention.

[fol. 389] Having thus described my invention, what I claim, and desire to secure by Letters Patent, is—

1. In an electric race-track, the combination of a generator a feed-conductor, a contact-conductor, a return-conductor, a railway-track, a railway-truck carrying a propelling-motor in circuit with the generator, a ridable figure mounted thereon—and a rank mechanism through which power is directly transmittible from the motor to the figure and vice versa, substantially as described.

2. In an electric race-track, the combination of the railway-track, a railway-truck carrying a propelling motor—a ridable moving figure mounted thereon—and a power-transmitting mechanism connecting the motor with the figure and through which movement is directly transmittible from the motor to the figure and vice versa, substantially as described.

3. The ridable race-track device consisting of, a truck with its track-wheels, a propelling motor, a ridable figure, a standard mounted upon the truck and supporting the figure, and a power-transmitting crank mechanism connecting the motor with the figure and all being combined substantially as described.

4. In a ridable race-track device, the combination of a ridable figure, a connecting-rod supporting the figure, a crank mechanism connected to the connecting-rod and to a power-transmitting mechanism, a connecting-rod-guiding standard, and a truck supporting the standard and carry-

ing all of the elements of the combination, substantialy as described.

5. In a ridable race-track device, the combination of a ridable figure, a crank power mechanism, a guiding-standard, and a connecting-rod supporting the figure at one end and connected at its other end to a crank power mechanism and having a wrist-pin connection with the standard through which a vertical and rocking motion may be given to the figure by the crank mechanism, substantially as described.

6. In a ridable race-track device, the combination of a ridable figure, a supporting-standard having a bracket to which the figure is trunnioned, a pitman connecting-rod connected at one end to the figure and by its other end to a crank-power-transmitting mechanism, a truck-propelling motor connected with the crank mechanism and a truck carrying all of the said elements, substantially as described.

7. In a ridable race-track device, the combination of a wheeled truck, a propelling-motor, a crank mechanism connected to the motor, a connecting-rod connected to the crank mechanism, a moving ridable figure connected to the connecting-rod, a standard mounted upon the truck and supporting the figure through a trunnioned connection therewith and having a pedal extension upon which a rider while upon the figure may support his weight and accelerate the speed of the truck, as desired, substantially as described.

8. In an electric race-course, the combination of a generator, a feed-conductor, a return-conductor, a series of railway-tracks, a corresponding series of trucks thereon, each carrying a ridable figure and provided with a propelling-motor, a corresponding series of contact-conductors each of which is divided into insulated sections and a circuit-controller for each contact-conductor section and connecting it with the feed-conductor and located at an operating-point within visible distance of the course, substantially as described.

9. In an electric race-course, the combination of a generator, a feed-conductor, a return-conductor, a series of railway tracks, a contact-conductor for each track and a

combined individual and master circuit-controller connecting each and all of the contact-conductors with the feed-conductor and located within visible operating distance from the course and a truck for each track and carrying a propelling-motor, substantially as described.

10. In an electric race-course, the combination of a generator, a feed-conductor, a return-conductor, a series of railway-tracks, a truck upon each track and carrying a ridable device and a propelling-motor, a contact-conductor for each track and a combined individual and master circuit-controller connecting each and all of the contact-conductors with the feed-conductor and located within visible operating distance from the course and by means of which the movements of the several trucks can be controlled while around upon the course, substantially as described.

11. In an electric race-track, the combination of a generator, a feed conductor, a return-conductor, a truck carrying a ridable figure and provided with a propelling motor, a controller having a rheostat mechanism, a double switch one member of which is adapted to open and close the return-conductor between the generator and the motor and the other member adapted to open and close the feed-conductor through the controller and alternately establish a circuit through the motor and the rheostat of the controller whenever the generator is thereby disconnected from the motor and the controller, substantially as described.

12. In an electric race-course, the combination of a generator, a feed-conductor, a return-conductor, a series of parallel railway-tracks, a contact-conductor for each track divided into insulated sections and the contiguous sections of the contact-conductors of two or more of the tracks [fol. 390] being each provided with a corresponding variable-resistance device and a controller mechanism which are located at a fixed position with reference to the tracks, a truck carrying a ridable figure and provided with a propelling-motor in circuit with the generator for each track, and the resistance devices adapted to regulate the amount of electricity supplied to their respective contact-conductors so that the trucks will be made to run around upon all of the tracks in the same amount of time and to thereby

compensate for their differences of length, substantially as described.

Signed at New York city, in the county of New York and State of New York, this 11th day of March, A. D. 1905.

Thomas F. Gaynor.

Witnesses: Mollie Rosenblatt, Emma M. Field.

(Here follow drawings, side folios 391-392 and 393-394.)

[fol. 395] United States Patent Office

Willis M. Elder and Clarence W. Turner, of Waverly, Tennessee

Animal-Chase

No. 816,081. Specification of Letters Patent. Patented March 27, 1906

Application filed July 15, 1905. Serial No. 269,821

To all whom it may concern:

Be it known that we, Willis M. Elder and Clarence W. Turner, citizens of the United States, residing at Waverly, in the county of Humphreys and State of Tennessee, have invented new and useful Improvements in Animal-Chases, of which the following is a specification.

Our invention has relation to a certain new and novel structure whereby a fox or other animal chase may be simulated; and it consists, essentially, of a peculiarly-constructed runway in which are arranged certain devices adapted to check or restrain the animals coursing therethrough.

The invention further consists of the general arrangement and combination of the several parts, as will be hereinafter fully described in this specification and briefly stated in the claims.

The prime object of the invention is to provide an amusing and harmless sport for the enjoyment of the public, one in which the element of cruelty to the coursing animals is entirely eliminated.

Defendants' Exhibit No. 18 391-392

No. 816,081. PATENTED MAR. 27, 1906.

W. M. ELDER & C. W. TURNER.

ANIMAL CHASE.

APPLICATION FILED JULY 15, 1905.

2 SHEETS-SHEET 1.

Fig. 1

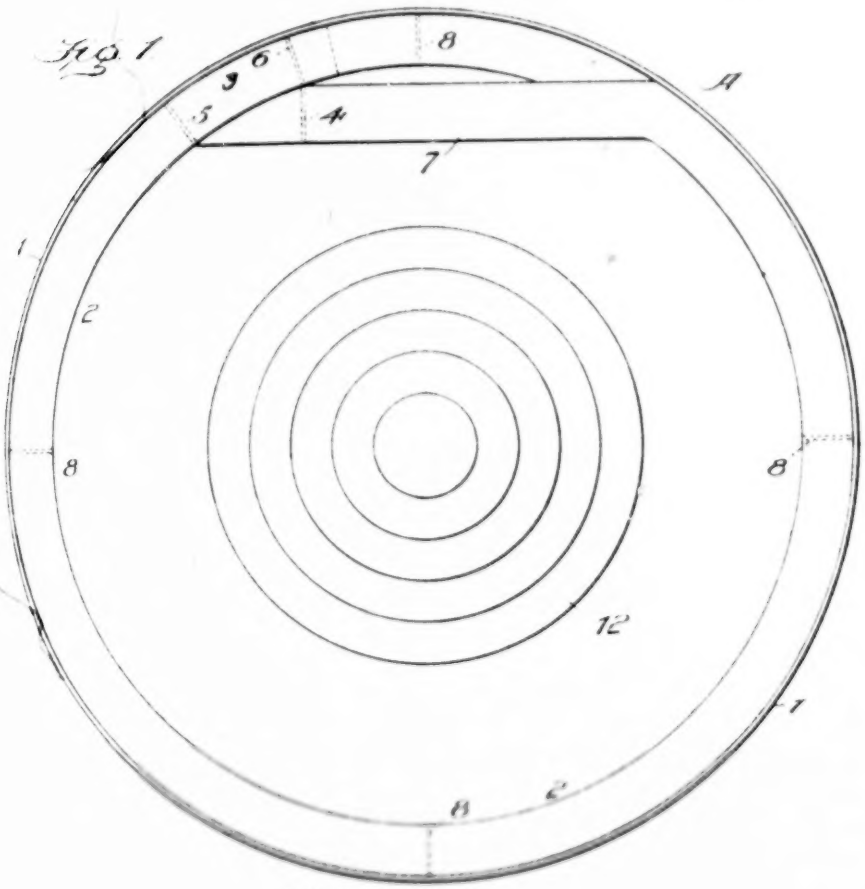
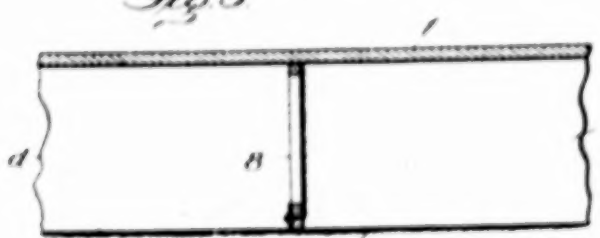


Fig. 5



Witnesses

Edwin L. Bradford

Leonard A White

Inventors

William M. Elder

and

Clarence W. Turner

By

Ralph Wormell Attorney

393-394

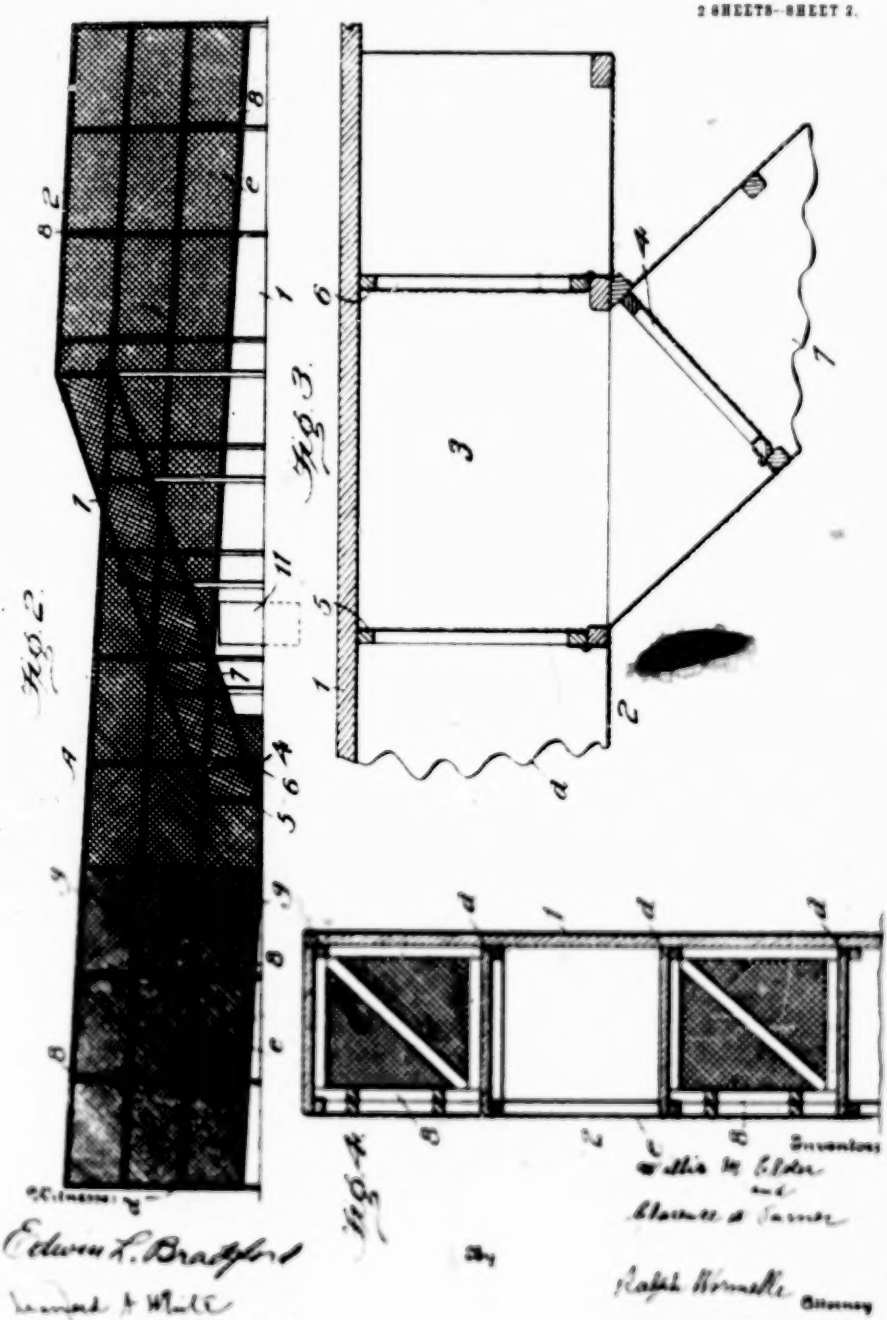
No. 816,081. PATENTED MAR. 27, 1906.

W. M. ELDER & C. W. TURNER.

ANIMAL CHASE.

APPLICATION FILED JULY 15, 1905.

2 SHEETS—SHEET 2.



Witnesses:

Edward L. Bradford

Leonard & Wheeler

Inventors:

William M. Elder

and

Charles W. Turner

By

Ralph Wormeley

Attorney

Other objects of the invention will become apparent upon a further description thereof.

In the drawings, Figure 1 is a top plan view of a structure adapted for our animal-chase; Fig. 2, an inner side elevation showing the arrangement of the runways; Fig. 3, a longitudinal horizontal section of a portion of the runways and the entrance thereto, showing the gates to the entrance-inclosure; Fig. 4, a vertical transverse section of the helical runway; and Fig. 5, a detail of one of the runways, showing one of the checking or restraining gates.

In the several views the letter A indicates a suitable inclosure which may be of any required size and shape, as our animal-chase is designed for the coursing of all classes of animals from the smallest to the greatest.

The numerals 1 and 2 indicate, respectively, the outer and inner walls of the inclosure between which the runway *d* is arranged. In the present instance the structure is circular in form, and the outer wall is made solid to prevent the coursing exhibition from being witnessed by persons on the outside of the inclosure. The inner wall is composed of a suitable grating or wire-netting *e* in order that the progress of the chase may be readily observed by those on the inside of the inclosure.

The runway *d* is constructed in helical form, and its lower and upper terminals are connected together by a covered runway 7, as shown in Fig. 2. Arranged at the lower end of the runway 7 is a gate 4, through which the animals to be coursed may enter from a starting-inclosure 3, formed by the gates 5 and 6. These gates 5 and 6 may be of any desired design and construction and be operated by any suitable means. Arranged in the runway *d* at proper intervals are checking or restraining gates 8, which may be operated in any well known manner, whereby the speed of either animal may be checked when desired—as, for instance, when the pursuing animal is in too close proximity to the animal being pursued.

Gates *g* may be arranged in the inner wall of the inclosure, so as to permit access to the runway *d* at desired points.

The numeral 11 indicates the public entrance to the inclosure, which is constructed partly below the surface of the ground, as shown by dotted lines in Fig. 2. Situated within the inclosure is a suitable platform or stage 12,

from which the coursing of the animals may be witnessed by the admitted public.

In coursing the animals the one to be pursued—say a fox—is let into the inclosure 3 and the gate 4 opened. At about the time gate 4 is opened the pursuing animal—for instance, a dog—is also let into the inclosure 3, and as the gate 4 is left open after the fox has passed through the chase immediately begins, both animals speeding up the runway 7 toward the upper end of the runway 6. From this point the chase continues in a gradual descent, owing to the helical formation of the runway 6. When the lower terminal of the runway 6 is reached by the fox, he is let through the gate 5 into the inclosure 2, and the gate being immediately closed the dog is prevented from following the fox into said inclosure. If desired, the direction of the coursing may be changed to allow the fox to start up the helical runway and finish by way of the inclined runway 7 by opening gate 5 to the fox and then allowing the dog to follow. When the fox reaches the lower end of runway 7, the gate 4 is opened to allow him to enter the inclosure 3 and then closed against the dog.

Having thus described our invention, what we claim as new, and desire to secure by Letters Patent, is

1. A fox or other animal chase comprising a helical runway, substantially as specified.

2. A fox or other animal chase, comprising a helical runways, the upper and lower ends of which are connected together by a connecting runway, substantially as set forth and described.

3. A fox or other animal chase, comprising a helical runway the upper and lower ends of which are connected together by a connecting runway, and means for checking or restraining the pursuit of the coursing animal, substantially as set forth and described.

4. A fox or other animal chase, comprising a helical runway, the upper and lower ends of which are connected together by means of a surrounded runway, restraining or checking gates situated within said connecting-runway, and checking or restraining gates suitably placed for diverting the direction of the coursing, substantially as set forth and described.

Defendants' Exhibit No. 19 397-398

No. 886,627. PATENTED MAY 5, 1908.

H. O. NEEBE.

AMUSEMENT DEVICE.

APPLICATION FILED MAR. 27, 1907

3 SHEETS—SHEET 1.

Fig. 1

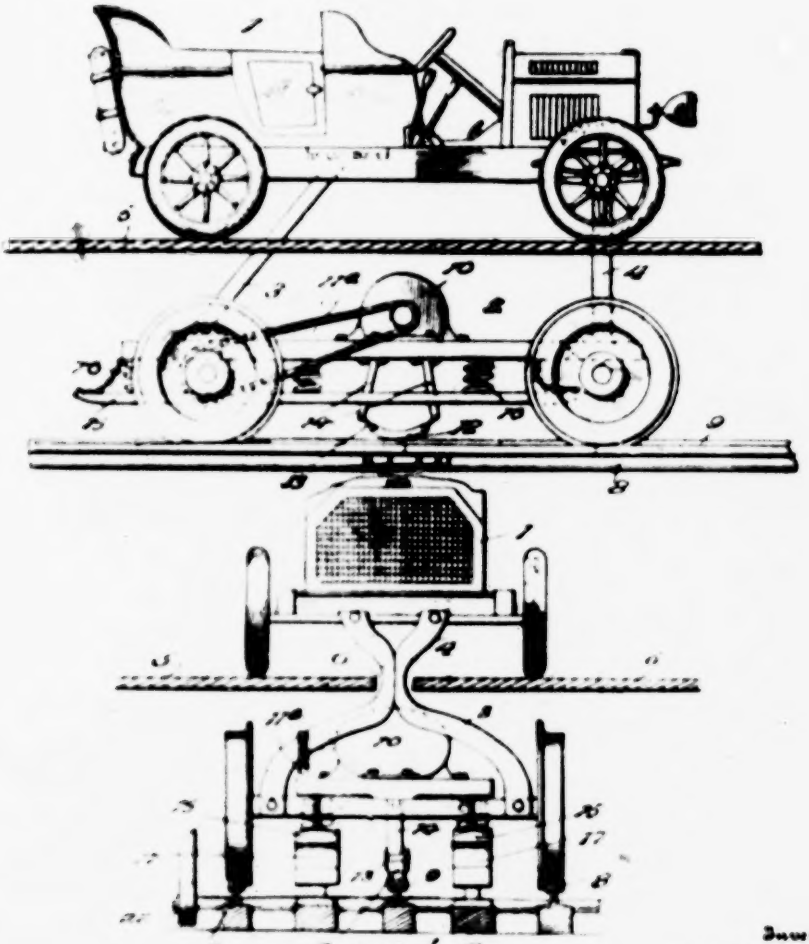


Fig. 2.

Inventor
H O Neebe

Witnesses
[illegible]

By R. A. Macy, Attorney

No. 886,627. PATENTED MAY 5, 1908.

H. O. NEEBE.

AMUSEMENT DEVICE

APPLICATION FILED MAY 27, 1907.

3 SHEETS—SHEET 2

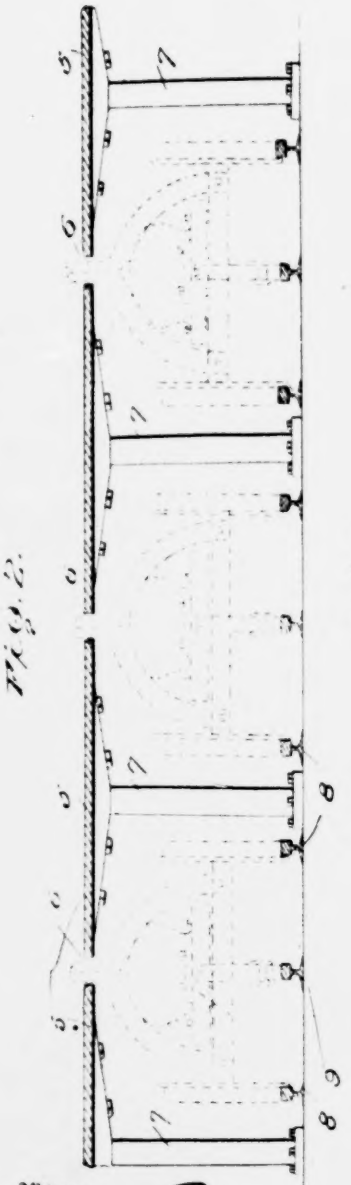


Fig. 2.

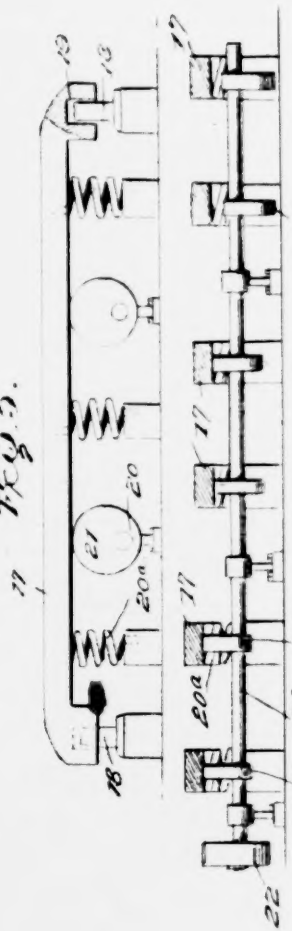


Fig. 3.

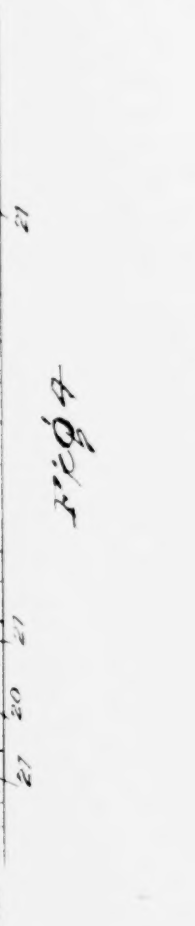


Fig. 4.

Witnesses:

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By R. A. B. Lacey Attorneys

401-402

No. 886,627. PATENTED MAY 5, 1908.

H. O. NEEBE.

AMUSEMENT DEVICE.

APPLICATION FILED MAR. 27, 1907.

3 SHEETS—SHEET 3.

Fig. 3

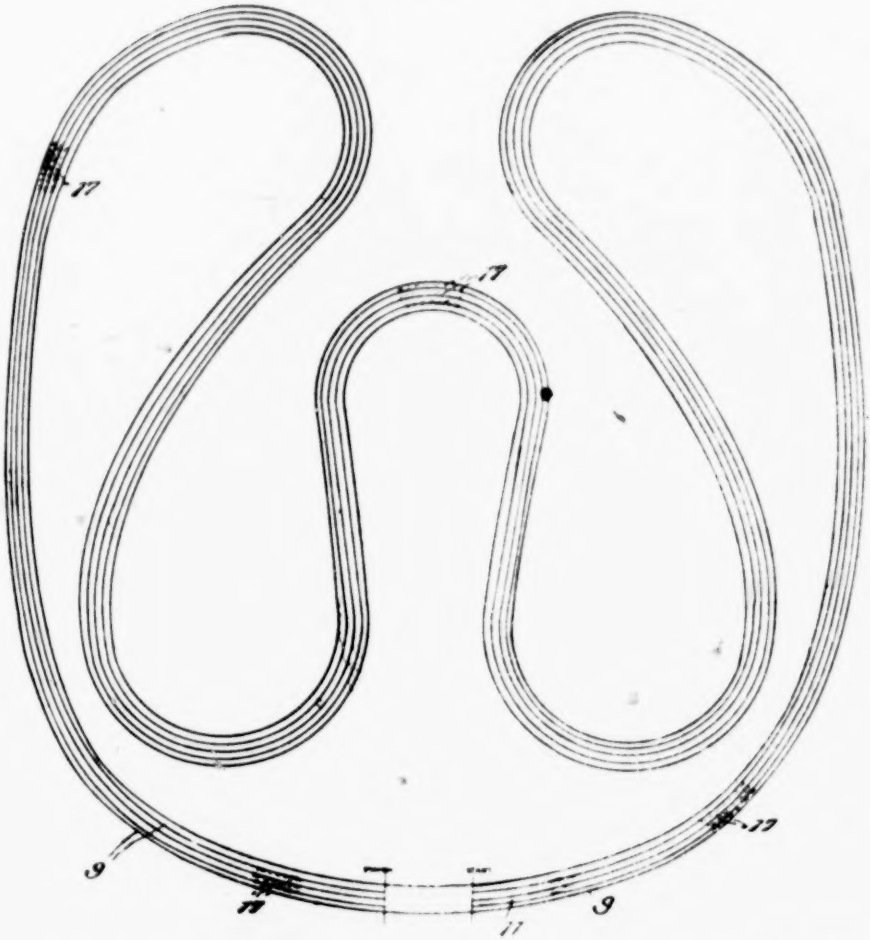


Fig. 7.

Witnesses

Inventor

H. O. Neebe

By R. A. O'Leary, Attorneys

In testimony whereof we affix our signatures in presence of two subscribing witnesses.

Willis M. Elder, Clarence W. Turner.

Witnesses: W. A. Meadow, Mason Sanders.

(Here follow drawings, vide folios 397-398, 399-400, and 401-402)

[fol. 403] United States Patent Office

Henry O. Neebe, of New York, N. Y.

Amusement Device

No. 886,627. Specification of Letters Patent. Patented May 5, 1908

Application Filed March 27, 1907. Serial No. 364,913

To all whom it may concern:

Be it known that I, Henry O. Neebe, citizen of the United States, residing at New York, in the county of New York and State of New York, have invented certain new and useful Improvements in Amusement Devices, of which the following is a specification.

This invention relates to pleasure apparatus which besides being exhilarating is exciting since competition enters as a factor, the device being in the nature of a race, while eliminating all the dangers of a race course which admits of the racers crossing and recrossing and those on the inside having the advantage.

For a full description of the invention and the merits thereof and also to acquire a knowledge of the details of construction and the means for effecting the result, reference is to be had to the following description and accompanying drawings.

While the invention may be adapted to different forms and conditions by changes in the structure and minor details without departing from the spirit or essential features thereof, still the preferred embodiment is shown in the accompanying drawings, in which:

Figure 1 is a side view of the invention. Fig. 2 is a transverse section of the race course showing a series of vehicles. Fig. 3 is a top plan view of the race course showing the reverse loops for equalizing the distance traveled by each of the vehicles. Fig. 4 is a detail view of the movable brake members and the actuating means therefor, showing the same on a larger scale. Fig. 5 is a side view of the movable brake member. Fig. 6 is a front view of the vehicle and its motor car, showing the tracks in section. Fig. 7 is a sectional view of a brake operating shaft showing the different angular positions of the eccentrics or cams.

Corresponding and like parts are referred to in the following description and indicated in all the views of the drawings by the same reference characters.

Each vehicle comprises a car 1 and a motor truck 2. The car 1 may be of any design and preferably represents an automobile with concomitant or conjunctive parts. The motor truck 2 is independent of the car and may be propelled by any mechanical force preferably by electricity. The vehicle is operated independently of the rider, being controlled from a given point, although this is not essential but is preferred as it obviates the necessity for providing an attendant for each car, thereby increasing the running capacity and at the same time reducing the carrying capacity. The motor truck is connected with the car in any convenient way as by stanchions 3 and 4, the rear stanchion being inclined, whereas the front stanchion is vertical and is forked at its upper and lower ends to make firm connection with the front axles of the car and motor truck. While the motor trucks may be conveniently arranged with reference to their respective cars, they are by preference located below the same in conduits or subways so as to be hidden from view and prevent tampering therewith.

The subways may be closed at their top side by means of plates 5, adjacent plates being spaced apart to provide slots 6 through which the stanchions 3 and 4 extend. Posts 7 support the plates 5 and are flanged at their upper and lower ends to provide for firm connection and a substantial support for the plates. Rails 8 are provided upon the bed of the subways for the motor trucks 2 to run upon. A third rail 9 is located intermediate of the track rails 8 and constitutes a conductor for conveying the electric current

to the electric motors 10 of said trucks. The third rail 9 is omitted near the finish and is replaced at the start by a dead rail 11 which is adapted to be charged only when starting the vehicles to insure a like beginning. The third rail 9 is charged at all times when the device is in running or working order so that the instant the vehicles leave their respective dead rails 11, they are operated by the current derived from the third rail 9. The motor 10 is connected with the axle of the drive wheel by means of a sprocket chain 11ª or in any convenient way, said sprocket chain passing around the sprocket wheels fast to the shaft of the motor and the drive axle. The shoe 12 arranged to run upon the third rail 9 is connected at its ends by links 13 with hangers 14 pendent from the frame-work of the truck.

In order to retard the speed of the vehicles, brake devices are located at intervals in the length of the course or track, said brake devices comprising complemental parts, one of said parts being attached to the motor truck and the other to the brake. The brake member 15 fitted to each of the trucks consists of a bar having its ends beveled and [fol. 404] pressed downward by one or more springs 16. The brake member 17 applied to the track consists likewise of a bar having opposite ends beveled and retained in place by suitable guide means as posts 18 projected upward from the bed of the track and entering openings 19 of the brake member 17. Springs 20ª normally hold the brake member 17 elevated. The frictional engagement between the brake members 15 and 17 retards the speed of the vehicles and by varying the degree of pressure, the speed of the vehicles may be checked to a greater or less extent. It is to be understood that a like number of brake members is provided for each vehicle so that there may be no undue advantage in favor of one or the other. The brake members are arranged at selected points and actuating means are provided therefor, the same consisting of a shaft 20 and pairs of eccentrics or cams 21. The cams or eccentrics 21 are arranged at different angles so that the brake members 17 are not acted upon alike or at the same time.

To equalize the strain upon opposite sides of the motor cars, a brake mechanism is arranged at each side of a medial line, hence two eccentrics or cams are necessary for each set of brake members 17 to operate both alike. The

shafts 20 are rotated either by a motor 22 or in any way so as to actuate the brakes. By having the eccentrics or cams 21 differently positioned, one of the brake members 17 will be free from the influence of the eccentrics, another will be actuated upon lightly, and a third will be moved so as to exert a maximum retarding influence, *i. e.*, to hold the brake members 17 elevated to cause a maximum frictional existence between said brake members 17 and the complemental brake members 15. The relative position of the eccentrics or cams is uncertain; hence an element of chance constitutes a factor in determining the finish. It is possible for one of the vehicles to meet with the full resistance of the brake mechanism at each point, and another vehicle to escape the retarding action of the brakes, whereas during another race, the conditions may be reversed. It is to be understood that the shafts 20 are continuously rotated and the brake members 17 not actuated upon by the eccentrics, exert but very little, if any, retarding influence upon the vehicle, whereas the brake members pressed upward by the eccentrics or cams exert a greater or less retarding influence according to the elevation of the brake member 17 determined by the position of the said eccentrics.

The track may be straight or curved according to the space, but unless the available space is limited, it is preferred to have the track continuous and comprising a series of appositely disposed loops as indicated in Fig. 3, this arrangement equalizing the distance traveled by each vehicle so that one may not have the advantage of the other which would be the case if the track were circular, oval, or of other outline admitting of the inner half being less than the other half. The space inclosed by the several loops will be provided with scenery of any type and the same may consist of shrubbery, trees or interesting matter such as grottos and representations of mythic shrines and the like. This scenery, besides adding to the interest of the trip, also serves to conceal the track except that immediately in front of and in the rear of the vehicle.

The front stanchion 4 provides means for automatically steering the car. The plates 5 are covered with sand, gravel, asphalt or any material to represent a roadway. A short distance from the finishing line are located brake members 17 to bring the vehicles or cars to a full stop after

clearing the dead rails 11. The brake members 15 are connected to the frames of the trucks by chains 23 to prevent their breaking and dragging beneath the trucks. The springs 20ª, as heretofore stated, hold the brake members 17 in normal position and draw them down after released from the eccentrics or cams 21. If desired the brake members 15 and 17 may be arranged in normal position to clear one another so as not to offer any resistance to the travel of the vehicles or cars. There will be two pairs of eccentrics or cams for each set of brake members 17 and they will be similarly arranged to move the brake members so as to run parallel to a given position at all stages of their movement. The reverse loops of the track besides equalizing the distances of travel of the vehicles result in greater capacity.

Having thus described the invention, what is claimed as new is:

1. In an amusement device, the combination of a series of tracks, a series of devices mounted to travel on the respective tracks, means for driving the devices at a uniform speed, retarding devices located in groups at intervals in the length of the tracks and of like resisting qualities, and means for operating the groups of retarding devices to bring them into play at different intervals to modify the speed of the said uniformly driven devices.

2. In an amusement device, the combination of a series of continuously driven devices propelled in the same direction at a like rate of speed and in parallel paths, groups of retarding devices arranged at intervals in the paths of the traveling devices, and means for successively bringing into play the retarding devices of each group.

3. In an amusement device, the combination of a continuous or endless series of tracks comprising reverse loops, whereby each is of like length, a series of devices mounted [fols. 405 & 406] upon the respective tracks, means for driving the devices at a uniform speed, groups of retarding devices of like resisting qualities located at intervals in the length of the tracks, and actuating means for said retarding devices to bring those of each group into play at different intervals in rapid succession.

Defendants' Exhibit No. 20

407-408

A. M. RICKS.

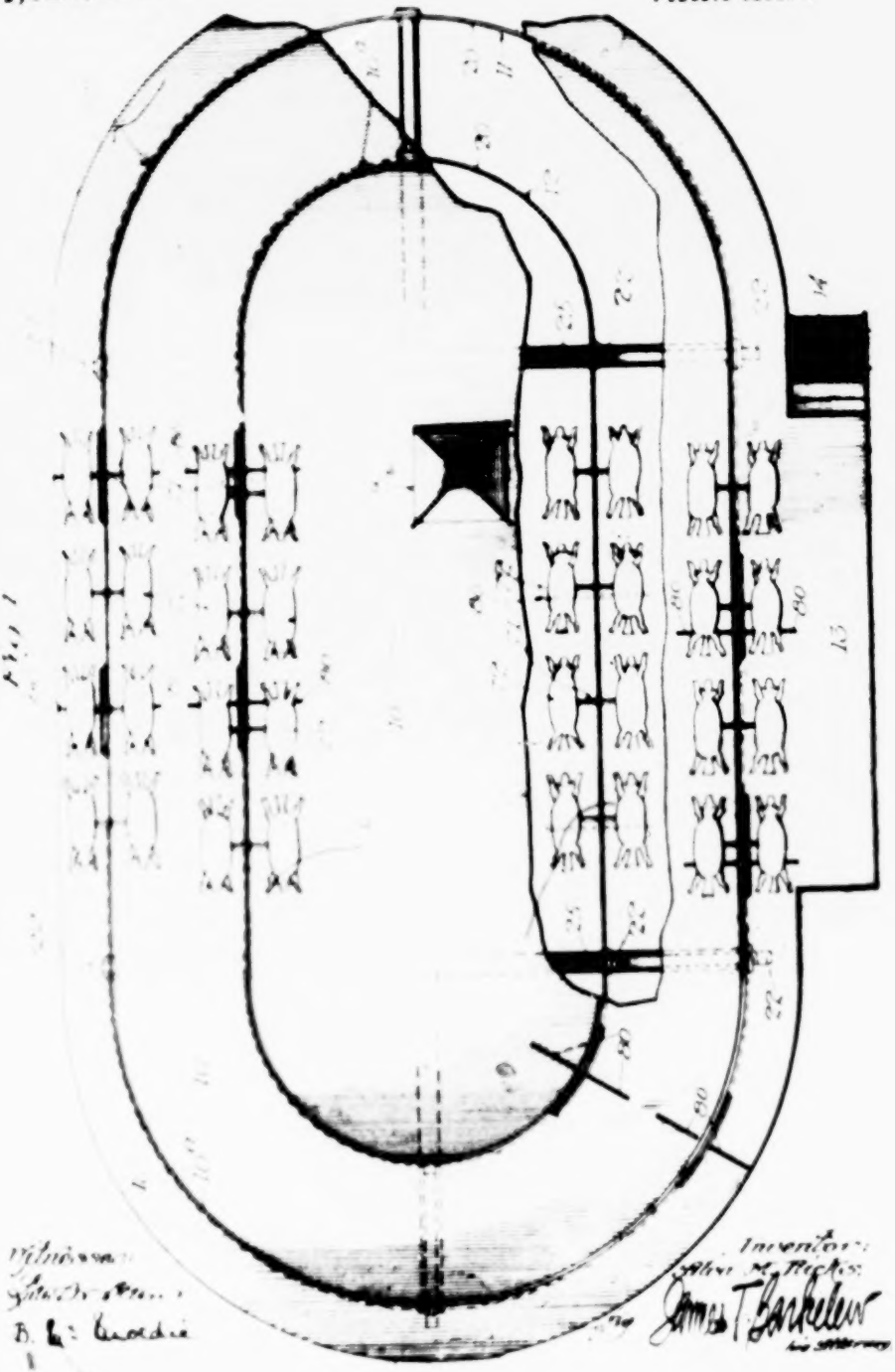
AMUSEMENT DEVICE.

APPLICATION FILED NOV. 21, 1911.

1,024,283.

Patented Apr. 23, 1912.

3 SHEETS—SHEET 1.



Witnesses:

B. L. Chandler

Inventor:

James T. Barkeley

A. M. RICKS.

409-410

AMUSEMENT DEVICE.

APPLICATION FILED NOV. 21, 1911.

1,024,283.

Patented Apr. 23, 1912.

3 SHEETS—SHEET 2.

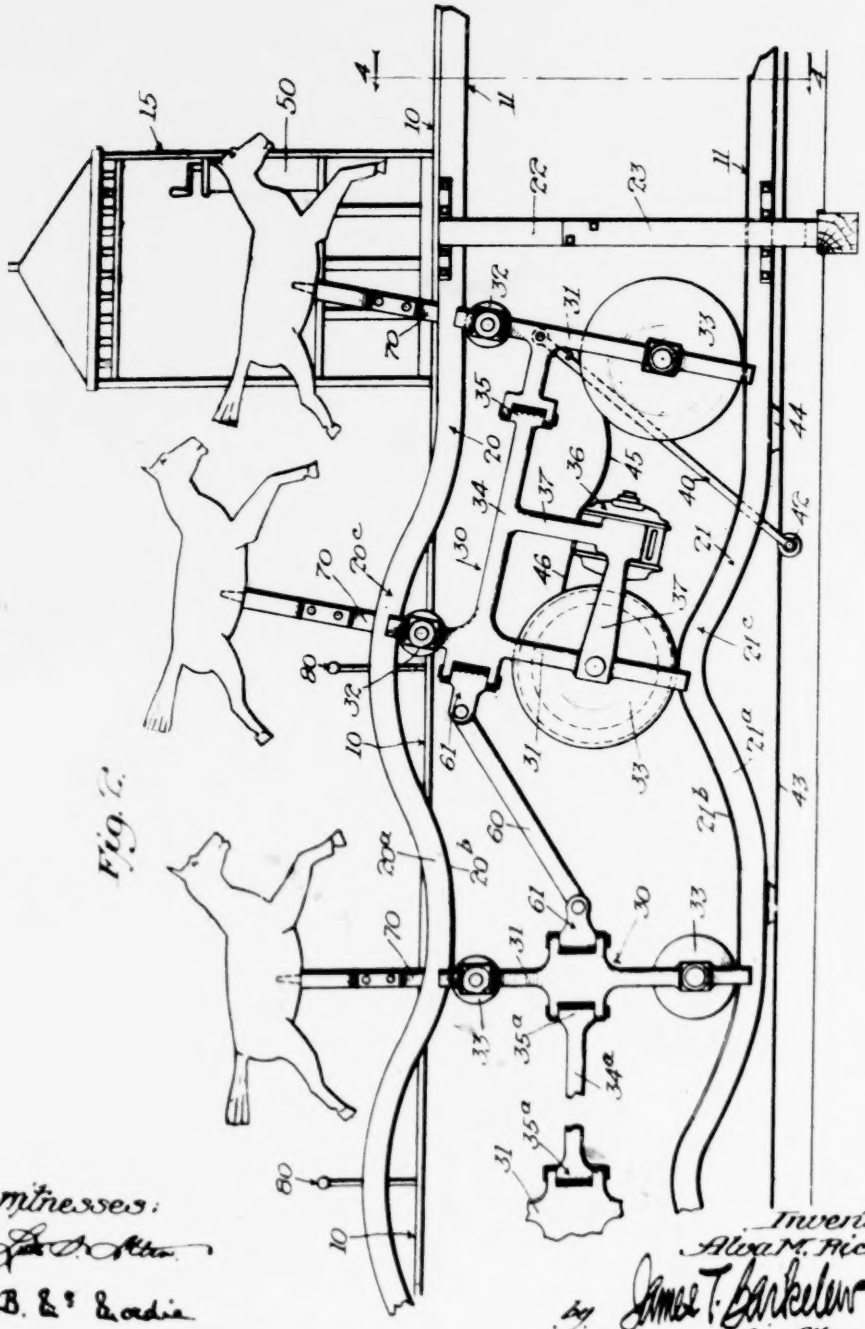


Fig. 2.

Witnesses:

B. E. Brodie

Inventor

Alex M. Ricks

by James T. Barkeley

his Attorney

411-412

A. M. RICKS.

AMUSEMENT DEVICE.

APPLICATION FILED NOV. 21, 1911.

1,024,283.

Patented Apr. 23, 1912

3 SHEETS-SHEET 3.

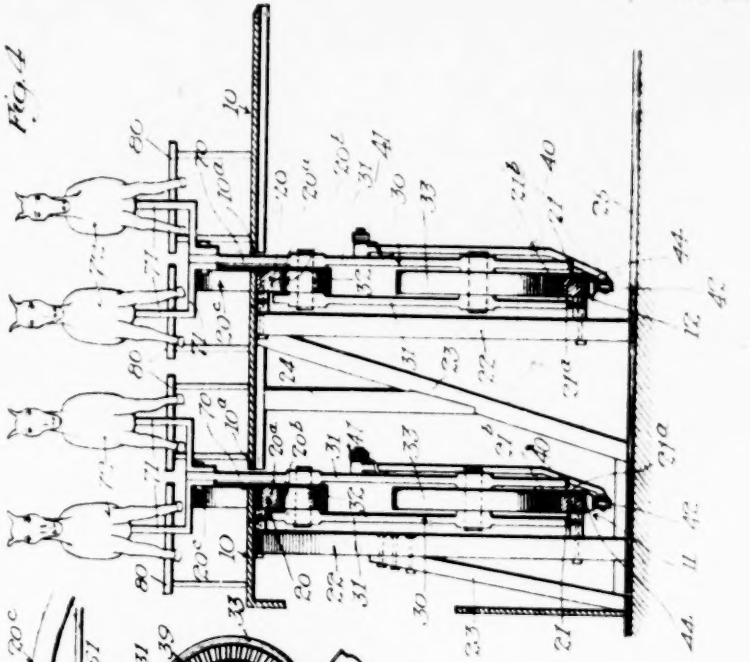


Fig. 2.

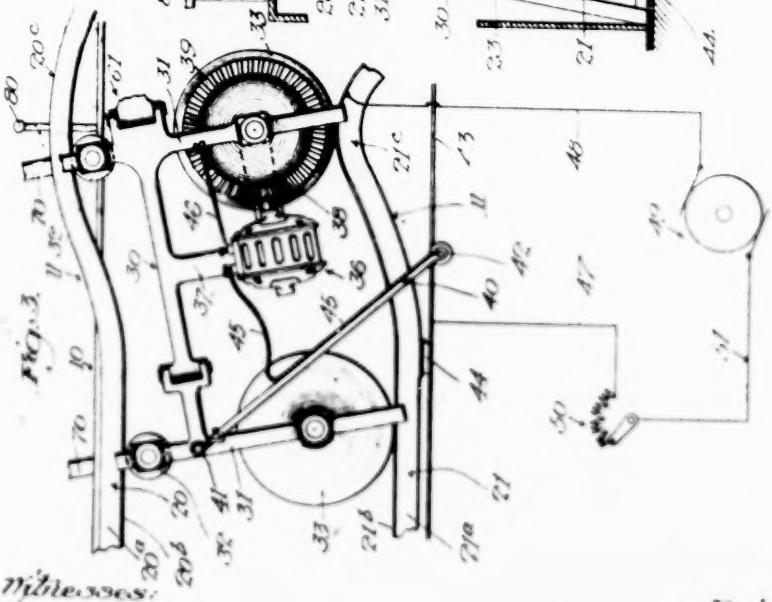


Fig. 3.

Witnesses:

Inventor:
Alva M. Ricks.

By James T. Barkdoll
Attorney.

in combination with suitable trucks traveling thereon, for producing a movement peculiarly suited for carrying equestrian figures and for imitating equestrian movements—although any sort of carriages may be mounted on the trucks and in which people may ride.

The invention consists primarily in the provision of a suitable platform beneath which a track is arranged, the track comprising a pair of rails one placed above the other. These rails have raised curved portions which cause the trucks traveling thereon to rise; and the curves may be made of any desired character so as to obtain a movement of any kind. The trucks traveling on the rails are so constructed that the horses supported and carried by the trucks will rise in a realistic manner as in leaping a hurdle or other barrier, and I place hurdles upon the platform over which the horses will be raised by the mechanism below; the apparent effect being that the horses travel along horizontally up to the hurdles and then leap them in a natural manner. I also prefer to provide two tracks, one within the other, and to provide such driving means for the trucks thereon that the speed of the trucks on the separate tracks may be varied at will. This provides for "racing" the trucks on the different tracks, allowing one truck to pass the other as on a real race-course. This variation of speed is preferably effected by providing each truck or group of trucks with a driving motor and controlling the current to the driving motor through the means of a rheostat or other electrical controller. In my preferred form of apparatus I have provided for a similarity to a real race-course and have mounted a controlling station at a convenient point on the course—at a position corresponding to the position of the judge's stand—and have mounted the controller therein; but this arrangement may be made as desired.

The structure and minor combinations of my device will be best understood from the following specification and the accompanying drawings, in which:

Figure 1 is a plan of my complete apparatus, portions being broken away for purposes of illustration. Fig. 2 is an enlarged side elevation of a portion of the apparatus. Fig. 3 is a side elevation of a portion of the mechanism shown in Fig. 2, looking from the opposite side of the device. Fig. 4 is a cross section taken as indicated by line 4—4 of Fig. 2.

In the drawings 10 designates a platform which preferably covers the entire apparatus, extending outside of the outer track 11 as is best indicated in Fig. 1 and covering the whole space within inner track 12. I have provided a landing platform 13 and steps 14 for the convenience of passengers. The surface of the platform 10 may be provided with any desired embellishments and may be made to imitate a race-course as closely as desired. At a suitable point on the platform 10 I have shown the controlling stand 15, this controlling stand being made to imitate a judge's stand. Tracks 11 and 12 are each composed of an upper and a lower rail 20 and 21 and these rails are supported on upright posts 22 braced by means of members 23, so that the whole construction is made rigid and durable. The platform 10 is supported by any suitable means; and I have shown members 24 particularly for the support of the platform 10 between the tracks 11 and 12. Just inside each track there is a slot 10^a cut in the platform, these slots being for the accommodation of the vertical posts which project upwardly from the trucks to carry the figures on their upper ends. Posts 22 rest upon suitable sills 25; and the number of these sills and posts will depend entirely upon the size of the whole apparatus. I have shown only a few of these supporting members; in a large apparatus the posts 22 would probably be spaced not more than eight or ten feet apart. The rails 20 and 21 are preferably composed of suitable backings 20^a and 21^a, say of wood, and facings 20^b and 21^b of steel or other durable material.

I have provided trucks 30 to travel upon the tracks and these trucks are so constructed that, in traveling over curved portions 20^c and 21^c of the rails, they will take cer- [fol. 414] tain angular positions as will hereinafter appear; each of the trucks 30 is preferably comprised in two upright portions 31 which carry upper wheels 32 and lower wheels 33 engaging with the upper and lower rails respectively. Upper wheels 32 are preferably small in all of the trucks; while lower wheels 33 are usually made larger than the upper wheels, and in the forward or driving truck I have made wheels 33 larger than in the other or trailing trucks. Upright portions 31 are joined by horizontal portions 34 and in these horizontal portions is placed a pivoted joint 35 so as to allow flexibility of the truck in passing around horizontal curves. On the driving truck the driving motor

36 is preferably supported by frames 37 in somewhat the manner illustrated, and this driving motor 36 carries a bevel opinion 38 meshing with gear teeth 39 on one of driving wheels 33. Current is supplied to the motor 36 through the medium of a circuit, one portion of which is formed by a trolley 40 pivoted at 41 to the truck frame and having a wheel 42 running on trolley wire 43 located on insulators 44 beneath the lower rail. A wire 45 connects the trolley wheel with one side of the motor 36, and the other side of the motor is connected by wire 46 with the framework of the truck. Through the framework of the truck and through the wheels the circuit passes to the metallic facing 21^b of the lower track. Current is supplied to the lower track facing 21^b on one side and to the trolley wire 43 on the other side through the medium of wires 47 and 48, wire 48 connecting facing 21^b with a generator 49, wire 47 connecting trolley wire 43 with controller 50, and a wire 51 connecting the controller with the generator 49.

I may connect as many trailing trucks to the driving truck as I find convenient and necessary. The trailing trucks are constructed similarly to the driving truck with the exceptions noted—that the lower wheels 33 are preferably smaller and that there is no motor on the trailing trucks. Connection between adjacent trucks is made by means of a draft bar connected through universal joints 61 with the two trucks. In the trailing trucks I may employ a construction in which the uprights 31 are connected by horizontal member 34^a, and this horizontal member is connected to each upright through the medium of a pivoted joint 35^a. This will make a pivoted joint near each upright member 31 instead of a single pivoted joint 35 as in the form of truck first described and preferably for the driving truck. In each truck each upright member 31—at the forward end of each truck—carries an upright post 70 which projects up through slot 10^a in platform 10. These posts 70 carry on their upper ends frames 71 which are of such configuration as to allow the mounting of two horses, or other carriages, 72 on each of the posts. Thus each truck carries four horses; and the arrangement becomes somewhat similar to the showing of Fig. 1. It will be observed, particularly from Figs. 2 and 3, that the individual trucks will pass

over the raised curved portions of the tracks in the manner as illustrated in Fig. 2 and in angular positions; so that the horses will rise over the curves in a realistic manner. That is, the horses' heads will first rise in coming to the curve and will first lower in passing off the curve. This is one of the features of my invention and I have provided to make the effect more realistic by placing suitable hurdles or other barriers 80 in the paths of the horses and over which the horses have the appearance of leaping. But other forms of carriages may be used, as some persons usually prefer a chair-like seat; and such a seat may be provided by mounting a chariot or other vehicle imitation on the rear uprights of a truck and mounting horses on the forward uprights.

Having described my invention, I claim:

1. In combination, a pair of rails arranged one above the other and each having raised curved portions therein, a truck comprising a frame having a horizontally swinging pivoted joint therein, forward and rear wheels on the truck bearing on each of the rails, and a motor on the truck and mechanically connected to one of the wheels.

2. In combination, a platform, a track comprising a pair of rails arranged one above the other and beneath the platform, each rail having raised curved portions therein, and a hurdle mounted on the platform adjacent the curved portions of the rails; a truck comprising a frame having a horizontally swinging pivoted joint therein and having upright members at its forward and rear ends, upper and lower wheels on each of the upright members of the truck and bearing on the upper and lower rails, an electric motor mounted on the truck and mechanically connected to one of the lower wheels, equestrian figures mounted above the platform and supported on the truck, and means including a controller to supply electrical energy to the electric motor on the truck.

3. In combination, a platform, a track comprising a pair of rails arranged one above the other beneath the platform, each rail having raised curved portions therein; a plurality of trucks each comprising a frame composed of forward and rear upright members and a horizontal connecting member between the uprights, there being a horizontally swinging pivoted joint in the horizontal connecting mem-

[fols. 415 & 416] ber, wheels on the upper and lower ends of each of the uprights and bearing on the upper and lower rails, mechanically connecting means between the several trucks, an electric motor mounted on one of said trucks and mechanically connected to one of the lower wheels thereof: an upright post extending upwardly from each of the truck uprights, there being a slot in the platform through which the upright posts pass, a carriage mounted upon the upper end of each upright, hurdles on the platform adjacent the curved portions of the track, and means including a controller for supplying electrical energy to the motor on the truck.

4. In combination, a pair of rails arranged one above the other and curving in vertical and horizontal planes, a truck arranged substantially in a vertical plane and including a frame having a horizontally swinging joint therein forward and rear pairs of wheels bearing on the upper and lower tracks, means to prevent lateral horizontal movement of the wheels from the tracks, and a motor on the truck frame connected to one of the wheels.

5. In combination, a pair of rails arranged one above the other and curving in vertical and horizontal planes, a truck arranged substantially in a vertical plane and including a frame having a horizontally swinging joint therein, upwardly projecting posts carrying equine figures above the frame, forward and rear pairs of wheels bearing on the upper and lower tracks, and means to prevent lateral horizontal movement of the wheels from the tracks.

6. In combination, a pair of rails arranged one above the other and curving in vertical and horizontal planes, a truck arranged substantially in a vertical plane and including a frame having forward and rear vertical members connected by a horizontally swinging joint, each of said members projecting upwardly and carrying an equine figure above the upper rail, a pair of wheels arranged on each of said frame members and bearing one against the upper rail and the other against the lower rail, and means to prevent the lateral horizontal movement of the wheels from the rails.

7. In combination, a pair of rails arranged one above the other, a truck arranged substantially in a vertical plane and including a pair of vertical frame members, each of said

frame members projecting upwardly and carrying an equine figure above the upper track, a pair of wheels on each of the frame members engaging one beneath the upper track and the other above the lower track, and means to prevent the lateral, horizontal movement of the wheels away from the rails.

In witness that I claim the foregoing I have hereunto subscribed my name this 9th day of November, 1911.

Alva M. Ricks.

Witnesses: Jas. H. Ballagh, Bessie McMordie.

(Horse-follow-guiding.—See folio 417-418.)

[fol. 419] No. 729,120. Patented May 26, 1903.

United States Patent Office.

Gustav Bertram, of Brooklyn, New York.

Third-Rail Electric-Railway System.

Specification forming part of Letters Patent No. 729,120, dated May 26, 1903.

Application filed February 28, 1903. Serial No. 145,498. (No model.)

To all whom it may concern:

Be it known that I, Gustav Bertram, a citizen of the United States, residing at Brooklyn, in the county of Kings and State of New York, have invented certain new and useful Improvements in Third-Rail Electric-Railway Systems, of which the following is a specification, such as will enable those skilled in the art to which it appertains to make and use the same.

The object of this invention is to provide an improvement in third-rail electric-railway systems whereby the third-rail, which carries the electric current, is inclosed and protected from sleet, snow, rust, and other substances and so as to avoid coming in contact therewith, a further object being to provide improved means for making electrical

Defendants' Exhibit No. 21 417-418

No. 729,120. PATENTED MAY 26, 1903.

G. BERTRAM.

THIRD RAIL ELECTRIC RAILWAY SYSTEM.

APPLICATION FILED FEB. 28, 1903.

NO MODEL.

Fig. 1

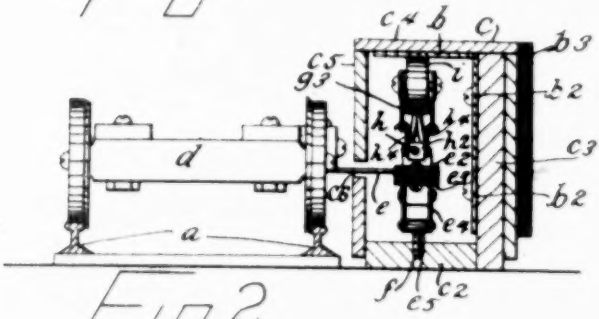


Fig. 2

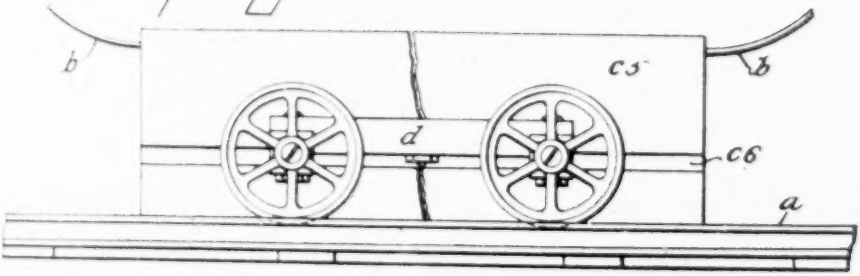


Fig. 3

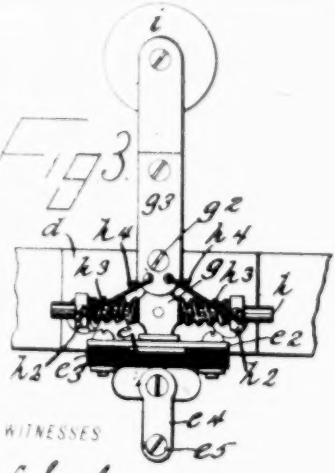
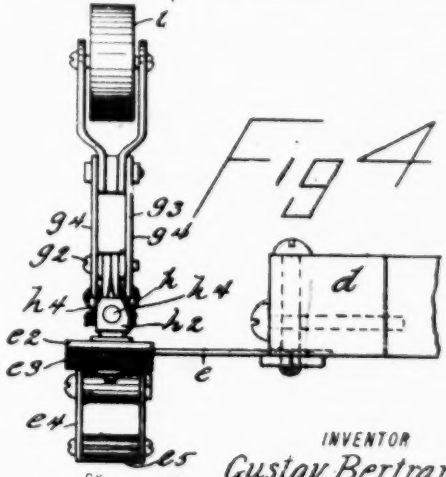


Fig. 4



WITNESSES

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F. A. Stewart

INVENTOR

Gustav Bertram

BY

Edgar Tate & Co.

ATTORNEYS

connection with said rail; and with these and other objects in view the invention consists in the construction, combination, and arrangement of parts hereinafter described and claimed.

The invention is fully disclosed in the following specification, of which the accompanying drawings form a part, in which the separate parts of my improvement are designated by suitable reference characters in each of the views, and in which—

Figure 1 is a cross-section of a third-rail electric-railway system embodying my invention and showing the truck of a car, the truck being shown on a much-reduced scale; Fig. 2, a side view thereof; Fig. 3, a side view of the contact device which I employ, and Fig. 4 an end view thereof and showing the means for connecting the contact device with the truck of the car.

In the drawings forming part of this specification I have shown at a the main rails of a railway-track, and at b the third or electric rail, which is inclosed in a casing c, which extends the full length of the track and which comprises a bottom member or support c^1, a back member c^2, and a top c^3, and in the form of construction shown the casing c, which incloses the third or electric rail, is also provided with a front c^4, in which is formed a longitudinal slot or opening c^5. The third or electric rail is L-shaped in cross-section, and one member thereof is secured to the back c^2 of the casing by means of bolts or screws b, and the back of the casing is also provided with insulating material b^1, which covers the outer ends of said bolts or screws and prevents contact therewith. I have also shown at d a car-truck, which is on a much-reduced scale, and secured to this truck in the usual or any desired manner is a contact-arm e, which passes through the slot or opening c^5 and the inner end of which is provided with a plate e^2, to the bottom of which is secured insulating material e^3, to the bottom of which is secured a wheel e^4, which carries an anti-friction-roller e^5, which is adapted to bear on a rail f, secured in the bottom of the casing c.

To the top of the plate e^2 is secured an upright member g, to which is pivoted at g^2 a trolley-arm g', preferably composed of separate side members g^4, the lower ends of which project below the pivotal support at g^2, and passing transversely through the bottom portion of the upright member

g is a shaft h, on the opposite ends of which are loosely mounted collars h^2, between which and the upright member g are placed spiral springs h^3, and said collars h^2 are connected with the downwardly-directed members g^1 of the trolley-arm g' by links, wires, or similar devices h^4, and the said links, wires, or similar devices h^4 serve to hold the trolley-arm g' in an upright position, as shown in Figs. 3 and 4, while at the same time permitting it to swing backwardly and forwardly.

In the upper end of the trolley-arm g' is mounted a trolley-wheel or similar device i, and said trolley-wheel or similar device is adapted to bear on the under surface of the contact portion of the third rail b, and in Fig. 1 of the drawings the trolley-wheel i is shown in operation and the trolley-arm is bent or inclined backwardly, this being the position it assumes when in operation.

It will be understood that the contact-arm c, which is connected with the truck d and which carries the trolley-arm g', may be of any desired form and may be connected with the truck in any preferred manner, and my invention is not limited to the form thereof nor to any particular means for connecting the same with the truck, all that is necessary in this connection being to provide an arm which may be secured to the truck and which will pass through the [fol. 420] slot or opening c^2 and support the trolley-arm g in the manner described and through or by which the electric current is conveyed to the motor on the truck or car and which is not shown.

The front c^3 of the casing c, in which the third or electric rail is placed, is not absolutely essential, nor is the form of the third rail herein shown and described, and any suitable form of rail may be employed.

By means of this construction it will be seen that the third or electric rail is so protected that contact therewith by persons in proximity thereto cannot be made, and fatal accidents are thus avoided, and it will also be seen that sleet, snow, or other substances which would prevent electrical connection therewith by the trolley-wheel i cannot collect thereon or be deposited thereon. It will also be apparent that by reason of the fact that the trolley-arm is free to swing in a vertical plane and the further fact that the springs h^3 operate to normally hold it in an upright position a proper connection with the rail b will always be

Defendants' Exhibit No. 22

421-422

J. S. FAIRFAX.

Street Car.

No. 60,868. Patented Jan. 1, 1867.

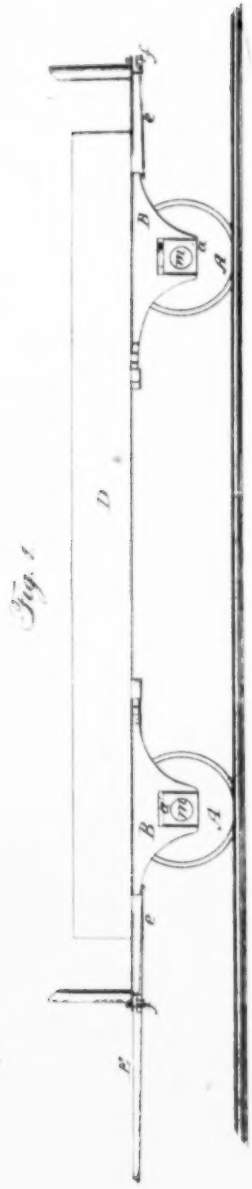


Fig. 1.

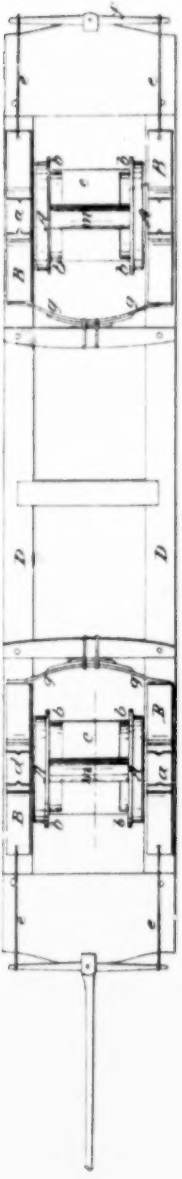


Fig. 2.

Fig. 4.

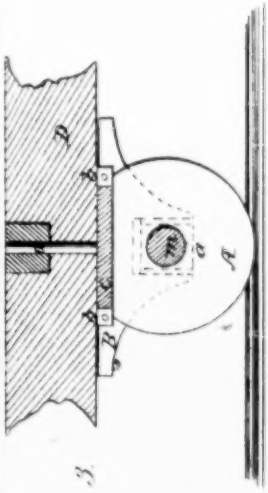


Fig. 3.

Witnesses:

J. A. Serrell
Thos. Tuck

Inventor:

J. S. Fairfax
per Munn & Co
Attorneys

made regardless of the position of the car or truck and of the movement thereof.

Having fully described my invention, what I claim as new, and desire to secure by Letters Patent, is—

1. In a third-rail electric-railway system, a contact-arm adapted to be connected with the truck of a car, said arm being provided with an upright member, a trolley-arm pivoted to said member, a shaft mounted transversely in the bottom portion of said member, collars loosely mounted on said shaft and connected with the side portions of the trolley-arm below its pivotal support, springs placed on said shaft between said collars and the upright member, and a trolley-wheel mounted in the end of said trolley-arm, substantially as shown and described.

2. In a third-rail electric-railway system a contact-arm adapted to be connected with the truck of a car, said arm being provided with an upright member, a trolley-arm pivoted to said member, a shaft mounted transversely in the bottom portion of said member, collars loosely mounted on said shaft and connected with the side portions of the trolley-arm below its pivotal support, springs placed on said shaft between said collars and the upright member, and a trolley-wheel mounted in the end of said trolley-arm, said contact-arm being also provided on the bottom side thereof with a depending support and an antifriction-roller mounted therein, substantially as shown and described.

3. In a third-rail electric-railway system, a contact-arm adapted to be connected with the truck of a car, a trolley-arm pivotally connected with said contact arm, springs for holding said trolley-arm in an upright position, a trolley-wheel mounted in the upper end of said trolley-arm, and a depending member connected with said contact-arm and provided with an antifriction-roller, substantially as shown and described.

In testimony that I claim the foregoing as my invention I have signed my name, in presence of the subscribing witnesses, this 27th day of February, 1903.

Gustav Bertram.

Witnesses: F. A. Stewart, C. E. Mulreany.

[fols. 423 & 424] United States Patent Office

Joseph S. Fairfax, of Wheeling, West Virginia

Improvement in Railroad-Cars

Specification Forming Part of Letters Patent No. 60,868, dated January 1, 1867

To all whom it may concern:

Be it known that I, Joseph S. Fairfax, of Wheeling, in the county of Ohio and State of West Virginia, have invented a new and useful Improvement in Street-Railroad Cars; and I do hereby declare that the following is a full, clear, and exact description thereof, which will enable others skilled in the art to make and use the same, reference being had to the accompanying drawings forming part of this specification, in which—

Figure 1 is a side view of a car-bed having my improvement on it. Fig. 2 is a bottom view of the same, showing the improvements in detail. Fig. 3 is a longitudinal vertical section of one truck. Fig. 4 is a detached view of one side of the truck or pair of wheels.

Similar letters of reference indicate like parts.

This invention relates to improvements in a street-railroad car, the principal object of which is to enable the car to turn curves easily, so that it may be stopped on the curve, if desired, and be started again without difficulty. There are other advantages connected with the application of these improvements to street-cars.

At one or both ends of the bed of a car the pair of wheels A A are hung on an axle, *m*, in the ordinary manner. The arms or ends of the axle run in square chucks or blocks, *a a*, which fit in pedestals or pendent frames, B B, placed immediately underneath the beams of the bed D, on each side. The pedestals are connected together by cross-braces, *b b*, before and behind the wheels A A, which braces, *b b*, are connected by a block or center brace, *c*, between the wheels, forming together a truck. A center pin or bolt, *d*, passes up through the center block *c* to a cross-bar of the bed, on which the truck and wheels are suspended and turn as a pivot; and on the face of the beams of the bed, against which the side pedestals B B bear and work when the truck

Defendants' Exhibit No. 23 425-426

J. Q. A. De HUFF.

Car Truck.

No. 64,640. Patented May 14, 1867.

Fig. 1

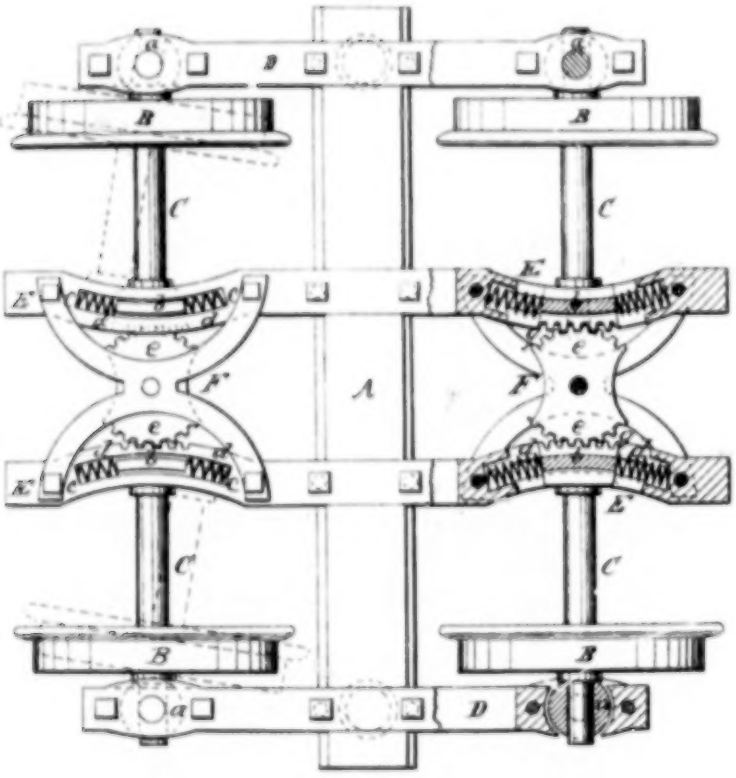


Fig. 2

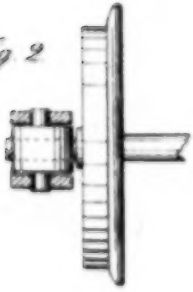
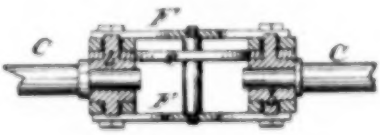


Fig. 3



Witnesses:

Theo Trusche

W. Keown

Inventor:

J. Q. A. De Huff

Per Munn & Co

Attorneys

is turned, are fastened flat iron or steel plates to prevent wear by friction. The tops of the pedestals may also be protected in the same manner. The forward ends of the pedestals B B are connected by iron rods *e e*, on each side of the car, with a splinter bar or evener, *f*, which turns on the same bolt or pin as the draft-pole E, and with it. Behind the truck are placed half-elliptic springs, *g g*, which bear against the rear ends of the pedestals B B, and bring them even and square with the car after turning a curve. Instead of elliptic, spiral springs may be employed. It will be seen that, when the draft-pole is moved to one side in turning a curve in the road, the rods *e e* will draw the pedestals B B around, and with them the wheels A A, to suit the curve, by which means of adaptation of the wheels the car will pass a curve very readily, and may be stopped and started again upon it without difficulty.

Having described my invention, I claim as new and desire to secure by Letters Patent—

The arrangement of the vibrating pedestals B B, connected with and supported by the cross-braces *b b* and the center block *c*, combined with the rods *e e*, the splinter bar *f*, and the spring *g g*, when applied to a street-railroad car, constructed and operating substantially as and for the purposes herein described.

Joseph S. Fairfax.

Witnesses: Wm. D. English, John Butterfield.

(Here follows drawing, side folios 425-426)

[fols. 427 & 428] United States Patent Office

J. Q. A. De Huff, of Summitville, Iowa

Letters Patent No. 64,640, dated May 14, 1867

Improved Car-Truck

The Schedule Referred to in These Letters Patent and Making Part of the Same

To all whom it may concern:

Be it known that I, J. Q. A. De Huff, of Summitville, in the county of Lee, and State of Iowa, have invented a new and improved Self-Adjusting Car-Truck; and I do hereby declare that the following is a full, clear, and exact de-

scription thereof, which will enable those skilled in the art to make and use the same, reference being had to the accompanying drawings forming part of this specification, in which—

Figure 1 is a top view of a car-track, showing my invention applied to it.

Figure 2 is a sectional view of the outside axle-boxes.

Figure 3 is a sectional view of the inside axle-boxes.

Similar letters of reference indicate corresponding parts.

This invention relates to an improvement on railroad car-trucks, and consists in arranging each of the wheels to run on an independent axle, instead of connecting them to run in pairs on the same axle as usual, but while the wheels shall move independently of each other on their own axles, they are so connected and arranged in movable boxes that they shall act in concert, and in turning curves of a track the axles will all preserve a position at right angles to the line of motion.

The ordinary truck-wheels running in pairs on the same axle cannot rotate together in passing curves, and consequently drag or slide more or less, greatly increasing the friction, and retarding motion at the expense of power, wearing the wheels, and injuring the rails. But if the wheels are arranged to run independently of each other, according to my improvement, they will adjust themselves to the track on both sides, and each wheel will move by its own rotation only and not by sliding or dragging on the rail, and thus it will travel on the centre of the rail without wearing the flange by excessive friction against the inside edge of the rail.

The general construction of car-trucks, with my self-adjusting arrangements applied to them, is similar to those in common use.

A represents the central cross-frame of the car-truck, having four wheels B as usual, all hung on separate axles C. The outside journals of the axles run in boxes *a*, which are cylindrical in form, and pivoted vertically in the sides D of the truck, as clearly shown in sectional detail fig. 2. The axles C may thus change their relative position to the sides of the truck by the rotation of the outside boxes *a*, while they keep at right angles to the line of motion of the wheels in turning curves of a track, as hereinafter de-

Defendants' Exhibit No. 24 429-430

(No Model.) 2 Sheets—Sheet 1.

W. ROBINSON.

STREET RAILWAY CAR.

No. 243,796. Patented July 5, 1881.

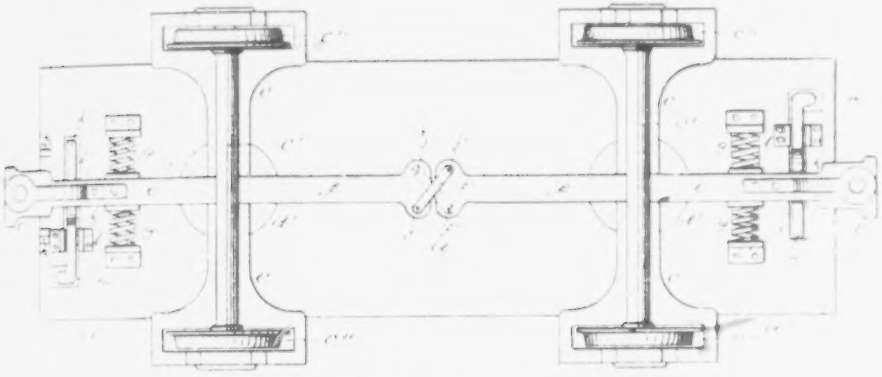


Fig. 1.

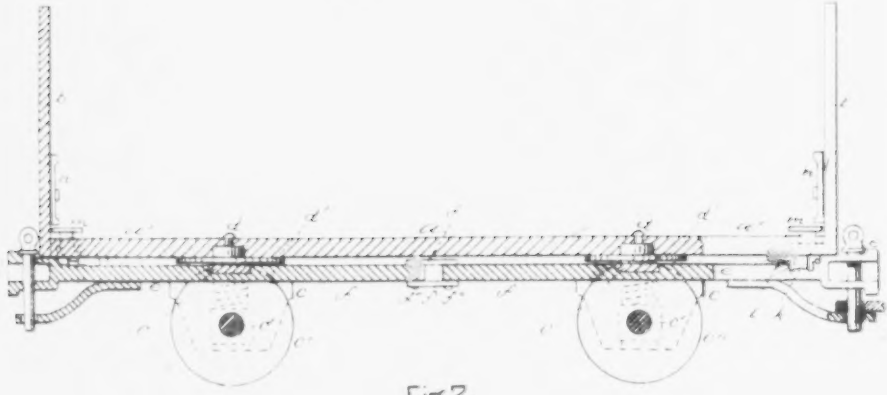


Fig. 2.

WITNESSES

Henry C. Wentworth

Arthur H. Bridge

INVENTOR

William Robinson

(No Model.) 2 Sheets—Sheet 2.

W. ROBINSON.

STREET RAILWAY CAR.

No. 243,796. Patented July 5, 1881

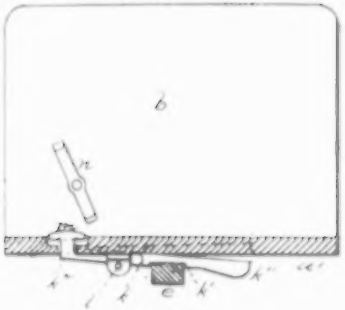


Fig. 3.

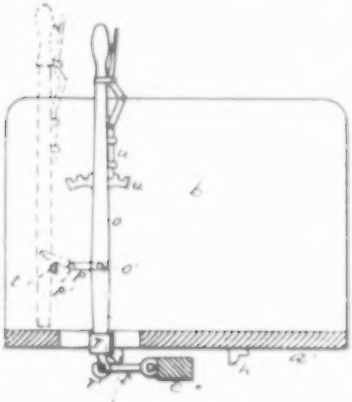


Fig. 4.

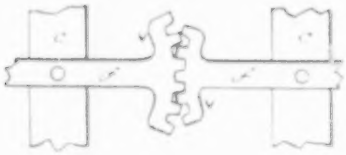


Fig. 5.

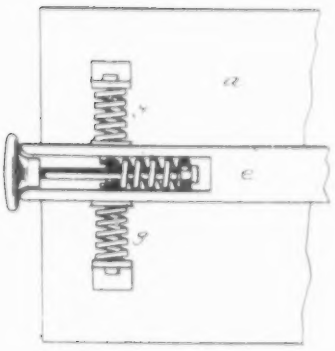


Fig. 6.

WITNESSES.

Henry A. Williams

Arthur H. Bridge

INVENTOR.

William Robinson

scribed. The inside journals run in boxes *b*, which are fitted in slots *c* in curved frames or guides E, in such manner that when the axles C change their position to adapt the wheels to a curve, the boxes *b* shall move back and forth therein. On both sides of the boxes *b* stiff spiral springs *d* are set in the slots *c* to hold the boxes steady in place, while at the same time they relieve them from the jar of any sudden and violent movement, as clearly shown in sectional detail in fig. 1. The curved guide-frames E are united by cross-frames F, above and below the axles, in which are placed horizontal cog-wheels or double segments *e*, that work in racks *g*, on the outside of the movable boxes *b*, by which means, when the wheels adapt themselves to the curve of a track, the boxes *b* will move in opposite directions in the slots of the curved guides for each pair of wheels, while the axles themselves will continue parallel to each other, and both be at right angles to the line of motion, as indicated in red lines fig. 1.

Having thus described my invention, what I claim as new, and desire to secure by Letters Patent is—

The arrangement of the double cogged segments *e* hung in the cross-frame F, between the curved guides E, combined with the springs *d*, slot *c*, racks *g*, the boxes *b*, and the axle C, arranged and operating substantially as and for the purpose described.

J. Q. A. De Huff.

Witnesses: Lewis N. Morgan, J. J. Brice.

(Here follow drawings, side folio pages 429-430, and 431-432)

[fol. 433] United States Patent Office

William Robinson, of Boston, Massachusetts

Street-Railway Car

Specification Forming Part of Letters Patent No. 243,796, Dated July 5, 1881

Application Filed November 29, 1880. (No model)

To all whom it may concern:

Be it known that I, William Robinson, of Boston, in the county of Suffolk and State of Massachusetts, have invented

new and useful Improvements in Street-Railways Cars, of which the following is a specification.

This invention is intended to provide means, in a street-railway or other four-wheeled car, for so radiating the axles that, while they will always be at right angles to the line of the track when the track is straight, they will, when the track is curved, take positions on radial lines with the circle or arc of the circle described by that portion of the track. The axles may be caused to take these positions—i. e., a right-angled position when passing over a straight track and a radial position when passing over a curved track—by the horses acting upon the forward truck, and thence upon the rear truck, such action being, if desired, within the power of the driver to prevent, or by mechanism operated entirely by the driver, all as fully described below.

The objects of the invention are to lessen friction upon curves, thereby saving much strain upon the horses and considerable wear of wheels and track, and to reduce the danger of the wheels leaving the track.

In the accompanying drawings, in which similar letters of reference indicate like parts, Figure 1 is a plan view of the under side of a street-railway car embodying my invention. Fig. 2 is a longitudinal vertical section of the same, a portion of one end being shown in elevation. Fig. 3 is a transverse vertical section taken just inside the dash board. Fig. 4 is a transverse section of the platform. Figs. 5 and 6 show modifications of parts of the mechanism employed.

a represents the bottom or floor of the car, and *b b* the dash-boards.

c c are trucks, pivoted at *d d* and supporting the axles *c' c'* and wheels *c'' c''*. A plate or large washer, *d'*, is placed between each truck and the car-bottom, and other plates or supporting intermediate pieces may be placed under the car, above the trucks, near their ends, if desired: or the trucks may be built up so as to rest against the car-bottom near their ends, so as to prevent straining or springing.

e e are bars secured to the trucks, and extending outwardly to or terminating in the draw-bars *e' e'*.

f f are bars secured to the trucks, and extending inwardly toward each other, and connected together by the two crossing links *f' f'*, each pivoted to both bars *f f* at

f'' f''. Preferably the links f' f' are placed upon the upper and under sides of the bar f f.

The bars e and f may be of any shape or number so long as the former are fixed to the trucks and pass to the draw-bars and the latter are fixed to the trucks and connect with each other, substantially as shown.

As the horse commences to draw the car around a curve he swings the draw-bar e', and hence the bar e, toward one side, thus radiating the forward axle, and by means of the bars f f and their connections the rear axle, both axles taking positions on lines which are radii of the same circle. Hence unnecessary friction is avoided and the wheels run smoothly around the curve. Suitable springs, a a, are provided to assist the trucks back into their normal position, and stops h h to prevent too much turn.

There being in use in some cities devices called "platform-switches," which are operated by driving the horses toward one side of the track upon them, and for other reasons, I have provided means for locking the trucks and allowing them to be released at the will of the driver, so that they may not be radiated until desired. A lever, k, hinged at l under the car, (see Fig. 3,) is provided with a groove, k', fitting over bar e, and is made heavier at its end k'', and bends at k''' upward, passing through the car-bottom and terminating in the head m. When the lever is in its normal position the truck is locked. When the driver desires to allow the trucks to be radiated by the horses, he presses the head m of the lever k, thus raising it from the bar e into the space l' in the car-bottom (see Fig. 1) provided for it. The bar e, and hence the trucks, are then free to turn. Releasing the lever again when the groove k' is over the bar e locks the bar and trucks. As the levers k are placed at both ends of the car, the bar e at the rear end must be left unlocked in order that the rear truck may be radiated by the forward truck. Hence buttons n or similar devices are provided, the rear buttons [fol. 434] pressing down the head m of the rear lever, k. Of course both levers may be pressed away from the bars e, if desired, and this would ordinarily be the case on a railroad where no platform switches were employed. The levers k may be held upon the bars e by springs, if thought best, in order to make their action more positive.

Fig. 4 is transversed section of the platform just inside the dash-board, and shows means for causing the tracks to be radiated by the driver. The trucks are radiated by swinging the lever *o*, which is placed at one side for convenience sake. This lever *o* is pivoted at *o'* to the short rod *p*, pivoted at *p'* to the dashboard. The lower end of the lever *o* lies in the socket *r*, supported by a hook or similar device, *r'*, loosely connected by rod *s* to the bar *e* operating the truck.

Of course there may be many modifications of the connection between the lever *o* and the bar *e*.

If it is desired to have the trucks free, the lever *o* may be lifted from the socket *r* and dropped into the position shown in broken lines, the rod *p* resting on the stud *t*.

Any convenient locking device, such as the well-known one shown by letters *u u'*, may be used for locking the lever *o*.

Fig. 5 is a plan of a modification, showing, instead of the bar or link connection *f' f'*, segment gears *r*, *r*, fixed to or integral with the bars *f f* and meshing into each other.

Fig. 6 is a plan view of the under side of a four-wheeled steam-railway car, there being many such in use for hauling coal, &c., in which the draw-bar is placed inside the bar *e*, which is bifurcated for the purpose. The play of the draw-bar is somewhat limited, but what play there is affects the truck through the bar *e*. In this case the draw-bar is, as usual in steam railway cars, secured to the car-body.

I propose to apply my invention to vehicles of any kind such as drays, trucks, &c., as far as practicable.

The springs *g g*, although preferably applied to the bars *e e*, may be applied to the bars *f f*, or directly to the truck, the main objects being to steady and limit the movement of said trucks.

In place of the lever *k*, a pin might be employed and adapted to drop through a hole in the platform into the bar *e*, thus locking the trucks.

I am aware that it is not novel in a car or carriage to provide a swiveling forward truck with a bar which, connecting with the draw-bar, turns the said truck on its axis.

Having thus fully described my invention, what I claim, and desire to secure by Letters Patent, is—

(Model.)

I. TOWELL.

STREET CAR.

No. 245,414. Patented Aug. 9, 1881.

Fig. 1.

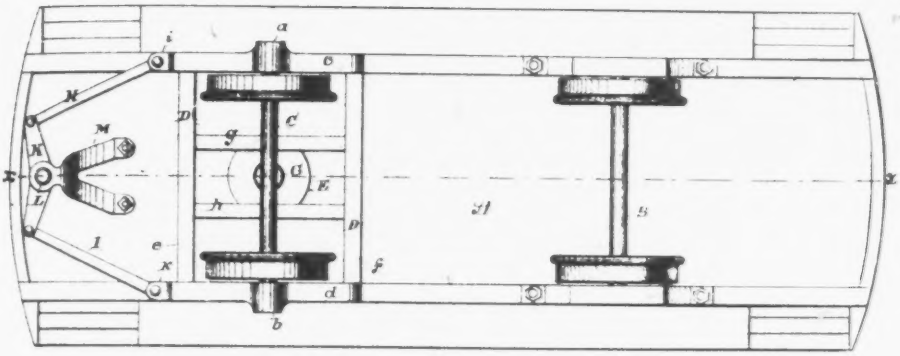


Fig. 2.

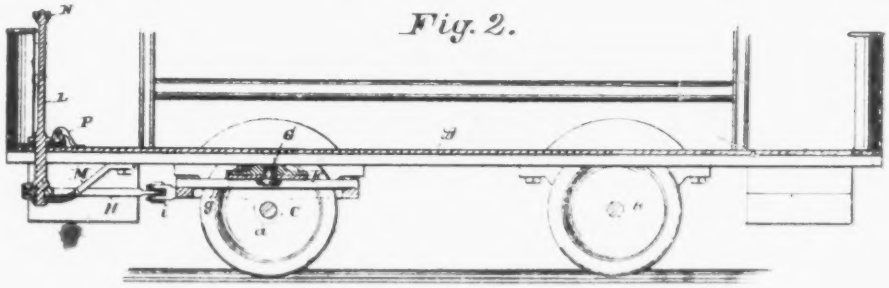
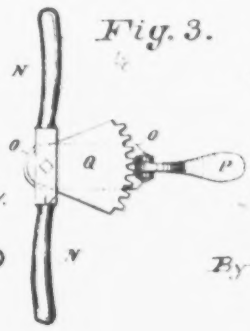


Fig. 3.



Attest:

Hamm Lauten

Wm. G. Henderson

Inventor:

Isaac Towell

By H. C. Abbot

Attorney.

1. In a four-wheeled car or other vehicle, the combination, with single swiveling trucks—*i. e.*, trucks each of which carries two wheels only—of bars *c c* or other connecting devices rigidly secured at their inner ends to the trucks, and adapted to be swung horizontally by the draw-bars, which are integral with said trucks, or connected with their outer ends, said trucks being connected with each other in such a manner that the radiation of one truck communicates exactly similar radiation to the other truck, the radiation of the trucks being caused by power applied to said rigid connections, substantially as and for the purpose set forth.

2. In combination with the bar *c* or other connecting device rigidly applied to the truck *c* and extending to the forward end of the car, substantially as shown, the lever *o*, pivoted at *o'*, having its lower end detachably connected directly or indirectly with said bar, and adapted to swing it horizontally, thus radiating the trucks, substantially as specified.

3. In combination with the trucks *c* and car-body *a*, the springs *g g*, applied to the car-body or to any rigid connection of the same, and bearing against the trucks or any rigid connection thereof, substantially as and for the purpose specified.

William Robinson.

Witnesses: Henry W. Williams, Arthur H. Bridge.

(Here follows drawing, side folios 435-436.)

[fols. 437 & 438] United States Patent Office

Isaac Towell, of Columbus, Texas

Street-car

Specification Forming Part of Letters Patent No. 245,414, Dated August 9, 1881

Application Filed June 4, 1881. (Model)

To all whom it may concern:

Be it known that I, Isaac Towell, a citizen of the United States, residing at Columbus, in the county of Colorado and

State of Texas, have invented certain new and useful Improvements in Street-Cars, the same being an improvement upon Letters Patent No. 219,039, granted to me August 26, 1879; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same, reference being had to the accompanying drawings, and to the letters or figures of reference marked thereon, which form a part of this specification, and in which—

Figure 1 is a bottom view of a street car embodying my invention. Fig. 2 is a vertical longitudinal section on the line *x x* of Fig. 1, and Fig. 3 is an enlarged view of the locking device.

My invention has reference to the construction of steam and other street-cars, whereby the same can be readily turned around corners, having for its object the simplifying of the construction and lessening the cost of construction of my invention described in Letters Patent hereinbefore referred to; and it consists in the construction of the various parts, as will be hereinafter more particularly set forth.

In the accompanying drawings, A represents the body of a street-car of any suitable construction; and B the rear axle, having its bearings in blocks secured at either side of the bottom of the car, and wheels rigidly attached thereto.

C represents the front axle, having two wheels rigidly attached, and provided with bearings *a b* in a truck or frame, D. The frame D is composed of two parallel side bars, *c* and *d*, two parallel cross-bars, *e* and *f*, extending from and secured to the bars *c* and *d*, and two central bars, *g* and *h*, extend from the bar *e* to the bar *f*, to both of which they are attached.

To the bars *g* and *h*, in the center of the frame, is secured a disk, E, of suitable dimensions, upon which rests a disk, F, these two disks being secured together by a king-bolt, G, and the disk F secured to the bottom of the car by any suitable means. This form of construction provides for the revolution of the frame.

The front ends of the bars *c* and *d* are provided with clips *i* and *k*, to which are bolted the eyes of rods H and I, that extend a suitable distance forward to the front end of the car, converging to the ends of a lever, K, to which they

Defendants' Exhibit No. 26 439-440

(No Model.) 2 Sheets--Sheet 1

B. F. ALLEN.

CONSTRUCTION OF RAILWAY CARS.

No. 532,937. Patented Jan. 22, 1895.

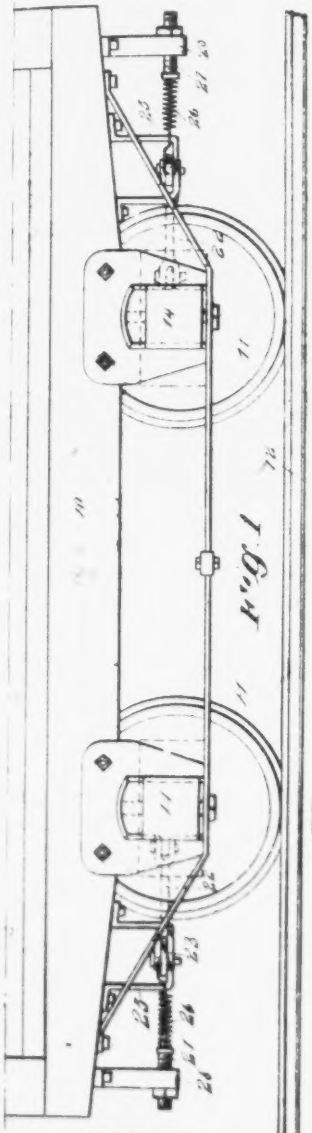


Fig. 1

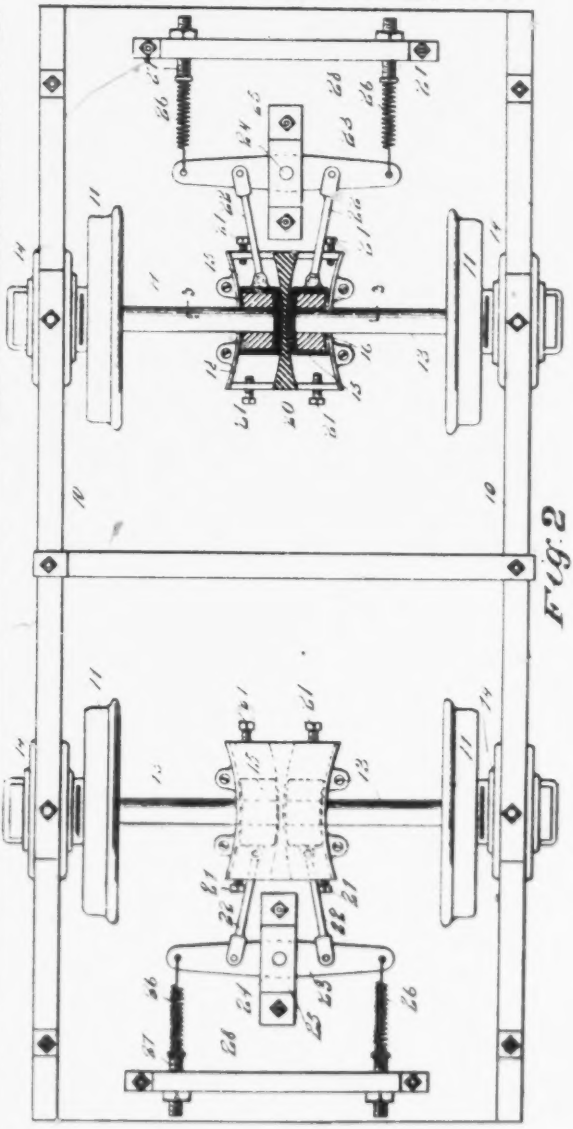


Fig. 2

WITNESSES:

John A. Bergstrom

H. P. Hutchinson

INVENTOR

B. F. Allen

BY Munn & Co

ATTORNEYS.

(No Model.) 2 Sheets—Sheet 2.

B. F. ALLEN.

CONSTRUCTION OF RAILWAY CARS.

No. 532,937. Patented Jan. 22, 1895.

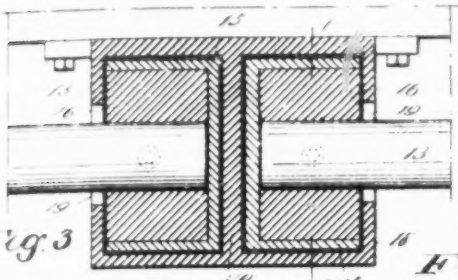


Fig. 3

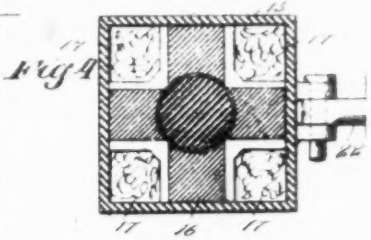
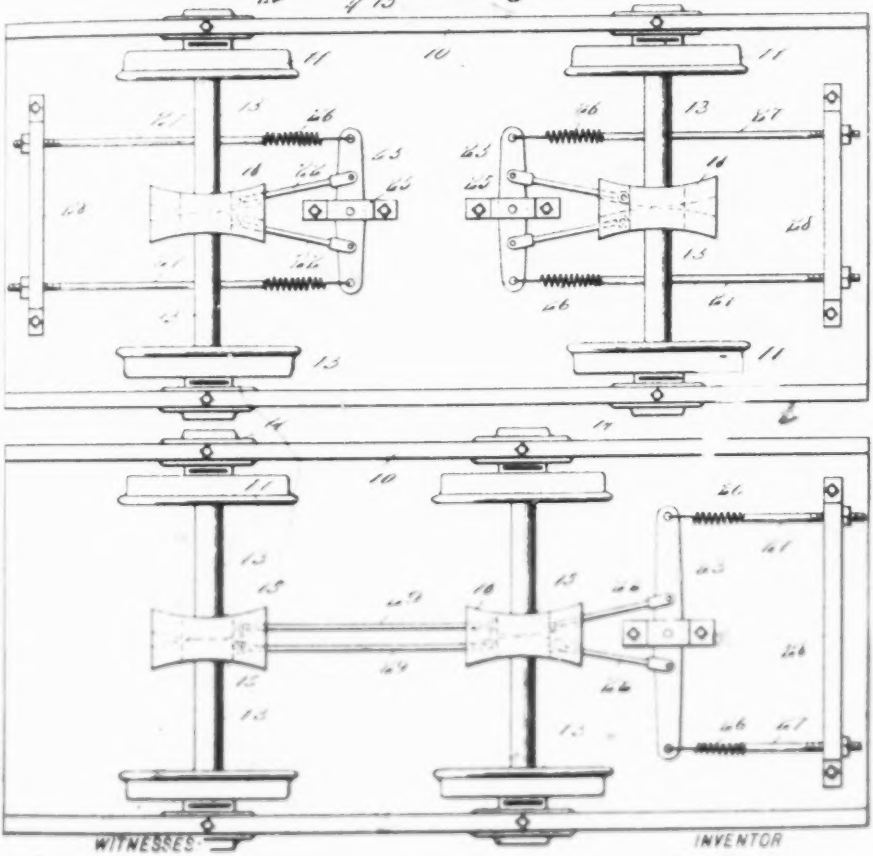


Fig. 4

Fig. 5



WITNESSES:

John A. Berglund

H. B. Hutchinson

Fig. 6

INVENTOR

B. F. Allen.

BY Munn & Co

ATTORNEYS

are attached. The lever K is secured to, or may form a part of, a vertical rod, L, that is stepped in a bracket, M, and extends through the bottom of the front platform of the car, terminating in a cross-bar, N, that gives abundant leverage.

On the platform of the car a plate, O, is secured, through which the rod L passes. Immediately above this plate the rod L has a serrated sector, Q, secured to it, forming a collar to bear upon the plate O and assist in sustaining the rod, and extending to the end of the plate, where the serrations engage with the end of a lever, P, suitably located and arranged to be operated by the foot of the driver.

In operating this device, as the car approaches a curve, the lever P should be raised and the wheels set for the curve, when the lever may be dropped into place again.

In the drawings accompanying this application I have shown my device applied to but one end of a car; but it is manifest that it may be applied to both ends when desired.

Having thus described my invention, I desire to secure by Letters Patent—

1. A street-car truck or frame, D, formed of parallel side bars, *c* and *d*, cross-bars *e* and *f*, bars *g* and *h*, disks E and F, and king-bolt G, substantially as shown and described.

2. The combination of the rod L, lever K, rods H and I, bracket M, and truck D, substantially as shown and described.

3. The combination of the rod L, plate O, sector Q, and lever P, substantially as shown and described.

In testimony whereof I affix my signature in presence of two witnesses.

Isaac Towell.

Witnesses: Herm. Lauten, Joseph Forrest.

(Here follow drawings, side folios 439-440 and 441-442)

[fol. 443] United States Patent Office

Benjamin F. Allen, of Mobile, Alabama

Construction of Railway-Cars

Specification Forming Part of Letters Patent No. 532,937, Dated January 22, 1895.

Application Filed September 26, 1894. Serial No. 524,173. (No Model)

To all whom it may concern:

Be it known that I, Benjamin F. Allen, of Mobile, in the county of Mobile and State of Alabama, have invented certain new and useful Improvements in the Construction of Railway-Cars, of which the following is a full, clear, and exact description.

My invention relates to improvements in the construction of railway cars and more particularly to the construction of car axles and the manner of hanging them. In order that a car may go easily around a curve, the axles and wheels are placed under the car as far as possible, thus giving the car a tendency to rock and, moreover, where a rigid axle is used, there is a great deal of friction on the wheel and rails when the car rounds a curve and besides there is a loss of power in pulling the car.

The object of my invention is to obviate these difficulties and to produce a two-part axle, which is hung in such a way that in rounding a curve the wheels will swivel slightly in relation to each other so as to follow the rails smoothly without friction, also to arrange the parts so that the wheels may be placed near the ends of the car if desired and will follow the track safely, and further, to make my improved construction as simple and durable as possible.

To these ends my invention consists of certain features of construction and combinations of parts, which will be hereinafter described and claimed.

Reference is to be had to the accompanying drawings, forming a part of this specification, in which similar figures of reference indicate corresponding parts in all the views.

Figure 1 is a side elevation of a railway car truck provided with my improved mechanism. Fig. 2 is an inverted

plan of the same. Fig. 3 is a detail section on the line 3—3 of Fig. 2, and shows in cross section the inner boxes of an axle. Fig. 4 is a cross section on the line 4—4 of Fig. 3, of one of the inner boxes. Fig. 5 is an inverted plan view of the truck, showing the equalizing levers arranged between the axles; and Fig. 6 is an inverted plan view of the truck, showing a pair of axles connected so as to work in unison, this construction being such as would be employed where two axles are arranged at each end of the car.

The truck frame 10 may be of any usual kind and it is mounted on the ordinary car wheels 11 which run on the customary track rails 12. Wheels, however, are secured to two-part axles 13, the outer ends of which are journaled in the customary boxes 14, but the axles and boxes have sufficient play to permit the inner ends of the axle sections to have the necessary oscillating movement, as presently described.

The inner ends of the axle sections are carried in [redacted]ing boxes 15, which are provided with suitable brasses 16, and the brasses are preferably of cross shape, as shown in Fig. 4, so that the corners of the boxes may be utilized for holding oil and waste, as shown at 17 in Fig. 4. The boxes are open on their outer sides, as shown in Fig. 3, and their inner sides are preferably of steel and serve as abutments to take the thrust of the axle sections.

The boxes 15 slide back and forth in a slideway 18 which is fastened beneath the car and is longitudinally slotted or left open in the sides, as shown at 19 in Fig. 3, so as to provide for the movement of the axle sections. The slideway is also provided with a vertical longitudinal partition 20 which is concave on the sides and which serves as a guide for the boxes 15. In the ends of the slideway are set screws 21 which may be adjusted to limit the movement of the boxes. The boxes 15 connect by rods 22, see Fig. 3, with a tilting lever 23, which extends transversely of the car, that is, parallel with the axle, and the lever is pivoted near the center, as shown at 24, in a bracket 25 or other suitable support.

The opposite ends of the lever 23 are secured to springs 26 which are attached to screws or bolts 27 in a suitable hanger 28 near the front end of the truck and beneath the car, and these bolts may be adjusted so as to regulate the tension of the spring. The springs need not be very heavy,

as the movement of the boxes 15 is slight and the wheels following the rails will, of themselves, easily bring the axle sections back to normal position, but the springs are connected so that in case there should be a tendency to stick the spring will obviate the difficulty.

[fol. 444] It will be seen that when the car rounds a curve one axle section will have a tendency to move forward and the other backward, and the movement is made regular and equalized by the equalizing lever 23 and the connecting rods 22 and this equalizing arrangement also causes the axle sections to return easily to their normal position. In some cases it is necessary to have the equalizing levers arranged between the axles of the car, as shown in Fig. 5, and to do this it is only necessary to hang the brackets 25 between the axles, to fulcrum the levers 23 on the brackets, connect them with the slide boxes 15, as specified, and use bolts 27 long enough to make suitable connections between the springs and the hangers 28.

In case two or more axles are arranged at one end of a car, the slide boxes 15 may be connected up in series, as shown in Fig. 6, and they work precisely as already indicated, that is to say, the slide boxes on the axle nearest the car end are connected with the equalizing lever 23 in the manner already described, which lever is arranged, as shown in Fig. 2, and the slide boxes 15 of the next axle sections 13 are connected by rods 29 with the first mentioned slide boxes, and thus the four boxes are similarly and coinstantaneously moved.

When the car rounds a curve the wheels move in true concentric circles, the inner ends of the opposite axle sections swinging slightly in opposite directions, and when the car strikes the straight track, the wheels cause the axle sections to return to normal position, this action being facilitated by the equalizing levers 23 and the springs 26.

Having thus described my invention, I claim as new and desire to secure by Letters Patent—

1. The combination of a frame, a two part axle journaled and pivoted therein, wheels on the two parts of the axle at the outer portions thereof, a lever pivoted on the frame, connecting rods connecting the ends of said lever with the inner ends of the parts of the axle respectively, and springs connected with said lever, substantially as set forth.

Defendants' Exhibit No. 27 445-446

G. C. TOWLE.

CAR TRUCK.

APPLICATION FILED JULY 20, 1912

1,061,146.

Patented May 6, 1913

2 SHEETS-SHEET 1

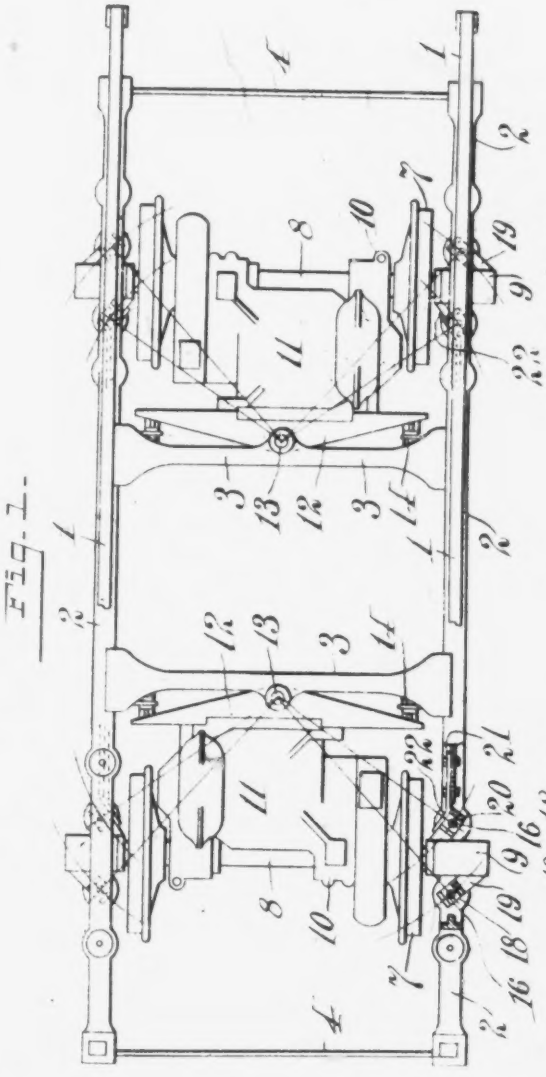


Fig. 1.

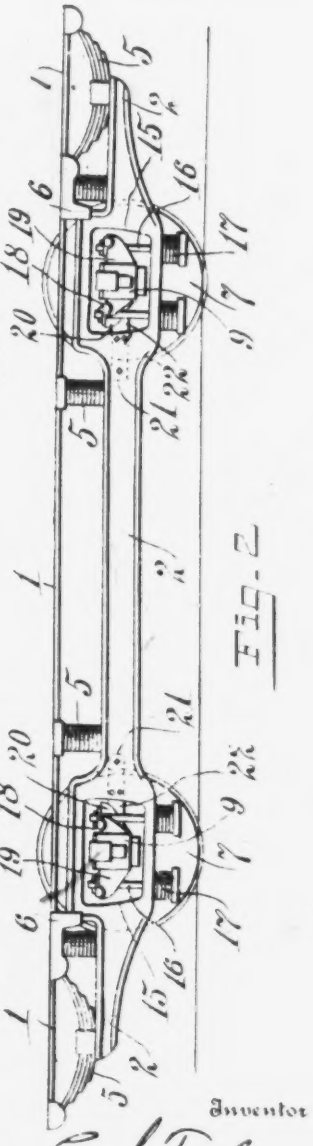


Fig. 2.

Witnesses
M. Sublett
M. Galloway

Inventor
Geo. C. Towle

By R. J. McCarthy

Attorney

G. C. TOWLE.

447-448

CAR TRUCK.

APPLICATION FILED JULY 20, 1912.

1,061,146.

Patented May 6, 1913.

2 SHEETS—SHEET 2.

Fig. 3.

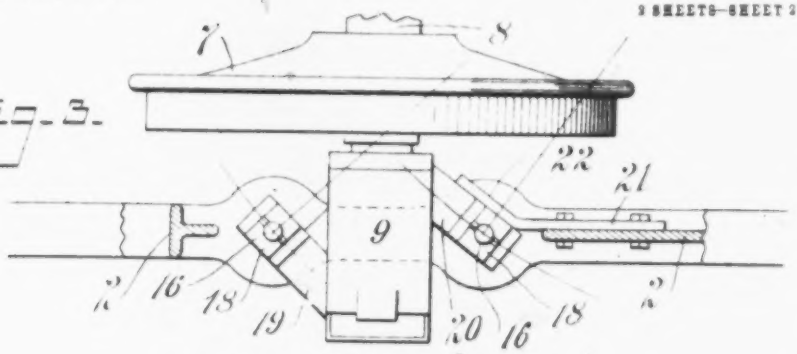


Fig. 4.

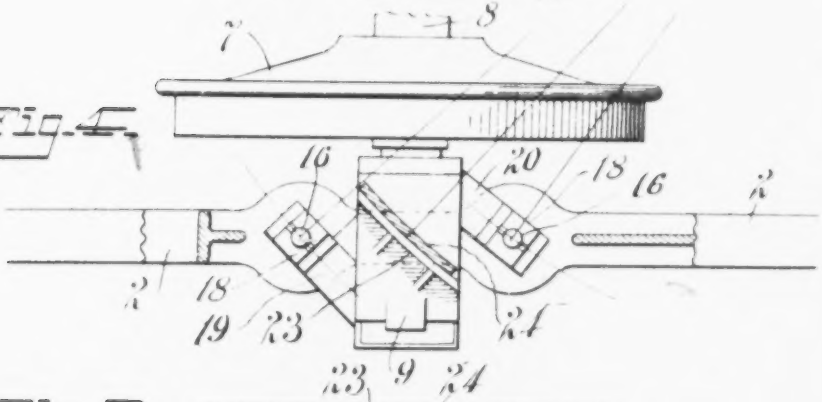
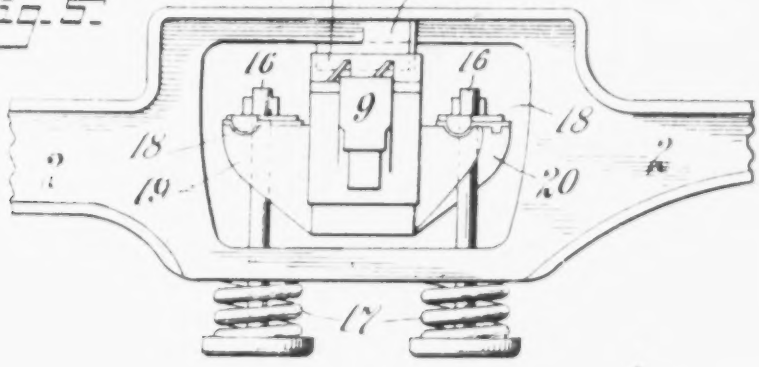


Fig. 5.



Inventor.

Geo. C. Towle.

Witnesses:

M. Sibley

By R. J. McCarty

Attorney.

2. The combination of a frame, a two part axle having its outer ends pivoted and journaled in the frame, wheels on the parts of the axle, a slideway having a central guide wall provided with opposite curved faces, the curves of which are drawn with radii from the pivotal points of the respective adjacent parts of the axle as center, boxes for the inner adjacent ends of the parts of the axle, mounted to slide on the curved faces of the guide wall of the said slideway, a lever pivoted on the frame, connecting rods connecting the opposite ends of said lever with the respective boxes, and springs for said lever, substantially as set forth.

Benjamin F. Allen.

Witnesses: Winfield S. Lewis, Thomas J. Henry.

(Here follow drawings, side folios 445-446 and 447-448)

[fol. 449] United States Patent Office

George C. Towle, of Dayton, Ohio

Car-Truck

1,061,146. Specification of Letters Patent. Patented May 6, 1913

Application Filed July 20, 1912. Serial No. 710,582

To all whom it may concern:

Be it known that I, George C. Towle, a citizen of the United States, residing at Dayton, in the county of Montgomery and State of Ohio, have invented certain new and useful Improvements in Car-Trucks; and I do declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same, reference being had to the accompanying drawings, and to the letters and figures of reference marked thereon, which form a part of this specification.

This invention relates to new and useful improvements in non-parallel axle car trucks.

The object of the invention is to provide means for preventing lateral movement of the car-body when the car is in motion.

Referring to the accompanying drawings, Figure 1 is a top plan view of a non-parallel axle car truck provided with my improvements. Fig. 2 is a side elevation of the same. Fig. 3 is a top plan view of one of the journal boxes with parts shown in section. Fig. 4 is a similar view showing a modified construction; and Fig. 5 is a side elevation of the same.

Throughout the specification and drawings, similar reference characters indicate corresponding parts.

Referring more particularly to the drawings, the truck consists of the following members: 1—1 represents two longitudinal side plates upon which a car (not shown) is mounted. Mounted below the plates 1 are side members 2 connected by intermediate cross members 3 and end cross members 4 and which form the main frame of the truck. The plate 1 and the members 2 are connected by the usual springs 5 of a car truck, and guides 6 are provided to maintain the car and truck in alinement during the vertical swaying movement of the car. The truck is provided with the usual wheels 7 mounted on axles 8 provided with journal boxes 9. To permit the axles to assume non-parallel positions when the truck is rounding a curve and to thus enable the wheel base of the truck to be made of greater length, the wheels 7 are pivotally connected to the truck frame as follows: Mounted on the axles 8 are motor journal bearings 10 which extend from motors 11. The motors 11 are attached to members 12 pivoted at 13 to the cross members 3. The journal boxes 9 lie in openings 15 in the side members 2 and are connected to the said members 2 by bolts or rods 16 through springs 17. This construction permits the journal boxes to have a lateral movement relative to the main frame of the truck, and provides for a flexible connection between the wheels and the main frame. The jars received by the wheels when meeting obstructions or passing an uneven track are, therefore, not transmitted to the main frame and car. The upper ends of the said rods 16 are attached to pivotal members 18 having bearings in projections 19 and 20 extending from the sides of the journal boxes. The axles of the pivotal members 18 are radial

with the pivots 13 to permit the subframes, consisting of the members 12 and the motors 11, the axles 8, the wheels 7 and the journal boxes 9, to swing around the pivots 13. While in the present case, the connection between the journal boxes 9 and the pivots 13 are through the moving parts 8 of the sub-frame, it is to be understood that such connection may be made by a rigid member in any well known manner. When the truck is rounding a curve, the pressure of the rails on the flanges of the wheels will swing the axles 8 on the pivots 13 to positions approximately radial with the curvature of the track. When the car is running on a straight stretch of track, the axles 8 are maintained in parallel positions by springs 14 which lie between the members 12 and the intermediate cross members 3.

In trucks of this type, it has been found that the car body and the main truck frame is subject to considerable lateral movement relative to the wheels and axles when the car is in motion. This movement is permitted by the swinging connections 16 between the side frames and the journal boxes, the lost motion between the journal boxes and axle, and the pivot 13. As before stated, trucks of this type may be made with a long wheel base and are adapted to support car bodies of great length and weight, features required in the more modern construction of street cars. The lateral movement of the ends of the car body will be very considerable which is due to the length and weight thereof. The ends of the car body overhang the trucks to a considerable extent. This may result in serious consequences. Under these conditions, the cars are liable to collide when moving in opposite directions on double tracks, and the wheels are liable to leave the track when they strike imperfections in [fol. 450] the rails, or obstructions on the track. To obviate the lateral movement of the car body and to thus obviate this element of danger, the following devices are provided.

Mounted on the inner sides of the side members 2 and adjacent to each of the journal boxes 9 are plates 21 provided with angle or guide portions 22 adapted to engage the inner faces of the projections 20 which extend from the journal boxes. The angle or guide portions 22 are disposed approximately tangential to circles having the pivots 13 as centers as indicated in Fig. 1. The projections 22 per-

mit the sub-frames to move circumferentially to the pivots 13 but prevent said sub-frame moving laterally or at approximately right angles to the truck. These said guide portions 22 are instrumental in eliminating the lateral movement of the car body and permit the wheels 7 to move only circumferentially to the pivots 13 relative to the car.

In Fig. 4 and 5 is shown a modified construction of guide for the sub-frame. In this construction, the journal boxes 9 are provided with ribs 23 which are engaged by ribs 24 attached to or which may form an integral part of the side members 2 at the top of the openings 15. The ribs 23 and 24 lie circumferentially to the pivots 13 and perform the same function as the guides 22 and substantially in the same way. The guides, consisting of the members 22 and the ribs 23 and 24 are such that the vertical movement of the journal boxes, relative to the main frame, is not interfered with. Therefore, a truck as thus constructed, possesses easy riding qualities.

Without limiting myself to the precise arrangement shown and described, I claim,

In a car truck, the combination with the main frame thereof, of sub-frames including journal boxes pivoted to said main frame, flexible connections between the main frame and the journal boxes whereby said journal boxes may have vertical movement relative to the main frame, and guides mounted on said main frame and engaging said journal boxes and adapted to prevent lateral movement of said main frame relative to the subframe.

In testimony whereof I affix my signature, in presence of two witnesses.

George C. Towle.

Witnesses: M. Galloway, Matthew Siebler.

(Here follow drawings, side folios 451-452 and 453-454.)

Defendants' Exhibit No. 28 451-452

T. J. BARROW.

STREET CAR TRUCK.

APPLICATION FILED JUNE 20, 1921.

1,412,383. Patented Apr. 11, 1922.

2 SHEETS—SHEET 1.

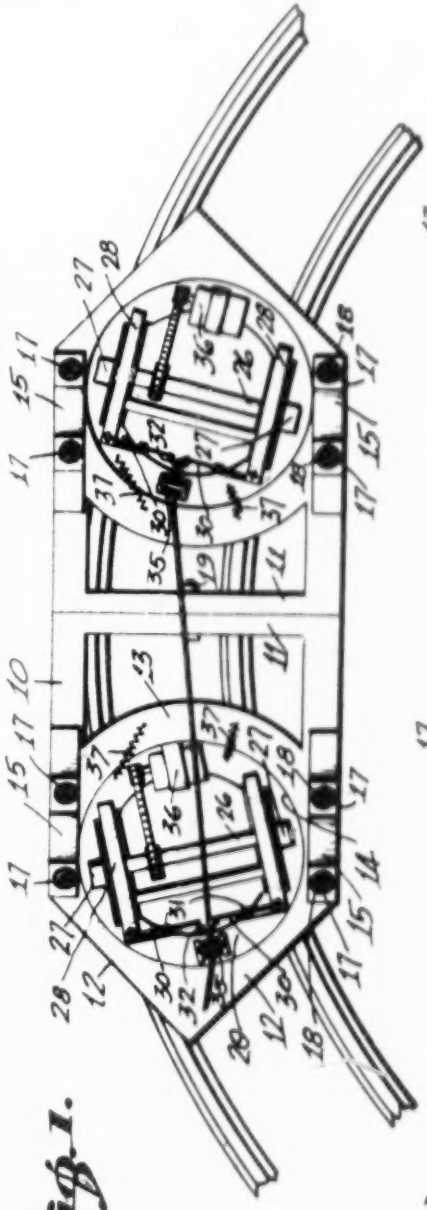


Fig. 1.

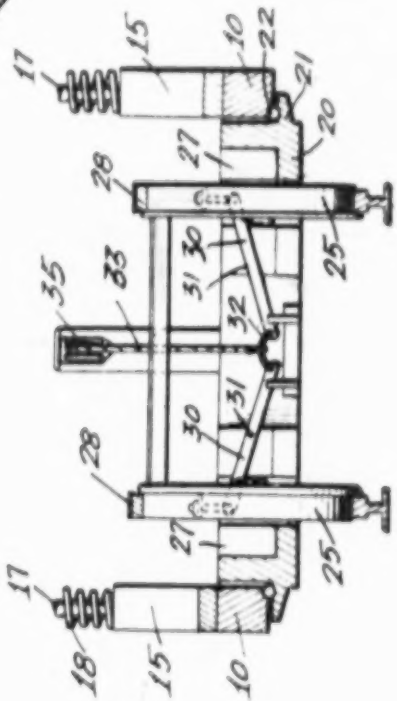


Fig. 2.

INVENTOR.

Thaddeus J. Barrow.

BY

Hazard & Miller

ATTORNEYS.

T. J. BARROW.

453-454

STREET CAR TRUCK.

APPLICATION FILED JUNE 20, 1921.

1,412,383.

Patented Apr. 11, 1922.

2 SHEETS—SHEET 2.

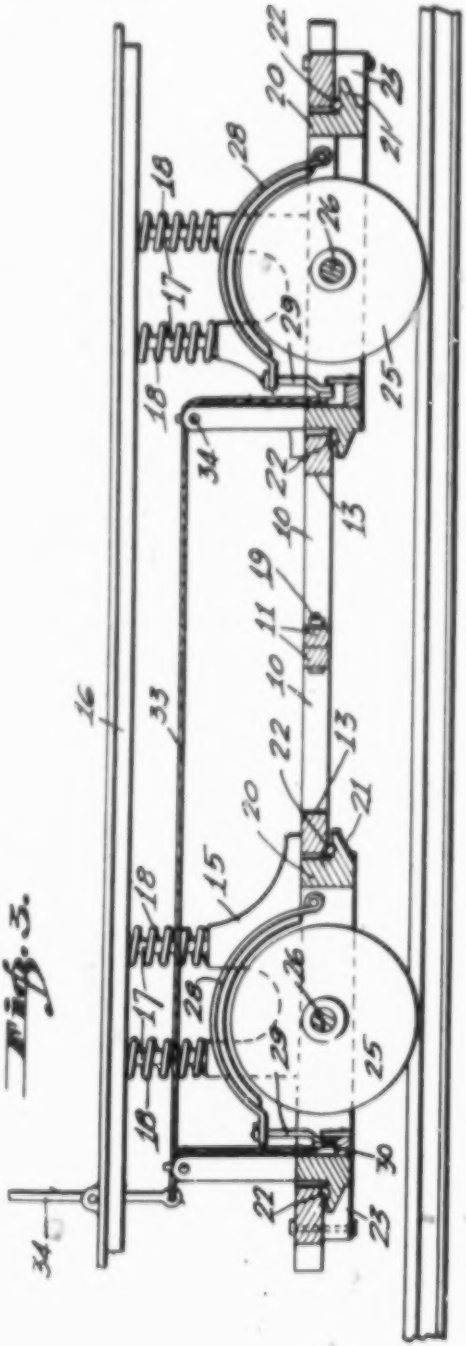


Fig. 3.

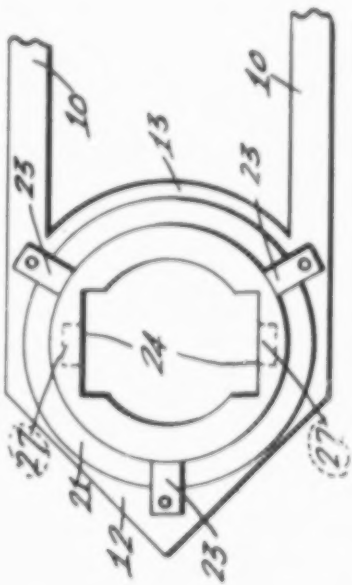


Fig. 4.

INVENTOR.

Thaddeus J. Barrow.

BY

Hazard & Miller

ATTORNEYS.

[fol. 455] United States Patent Office

Thaddeus J. Barrow, of Riverside, California Street-Car Truck

1,412,383. Specification of Letters Patent. Patented Apr. 11, 1922

Application Filed June 20, 1921. Serial No. 478,999

To all whom it may concern:

Be it known that I, Thaddeus J. Barrow, a citizen of the United States, residing at Riverside, in the county of Riverside and State of California, have invented new and useful Improvements in Street-Car Trucks, of which the following is a specification.

My invention relates generally to car trucks and more particularly to trucks for street cars, the principal objects of my invention being to generally improve upon and simplify the construction of the existing types of street car trucks; to provide a car truck having great strength and durability; to provide a car truck wherein the wheel carrying axles are mounted upon horizontally disposed rotatably arranged members, thereby permitting the wheel carrying axles to swing freely in a horizontal plane and consequently enabling the truck to traverse relatively short curves; to combine with the truck relatively simple and effective brake mechanism that will operate positively regardless of the positions of the wheels; to provide a truck construction that is capable of being easily assembled or taken apart; and further, to provide a truck that can be easily and cheaply produced, and which will be very effective in performing its intended functions.

With the foregoing and other objects in view, my invention consists in certain novel features of construction and arrangement of parts that will be hereinafter more fully described and claimed, and illustrated in the accompanying drawings, in which:

Figure 1 is a top plan view of a car truck of my improved construction and showing the same in position upon a curved portion of a track.

Fig. 2 is an enlarged cross section taken approximately on the line 2—2 of Fig. 1.

Fig. 3 is a longitudinal section taken approximately on the line 3—3 of Fig. 1.

Fig. 4 is a view looking against the under side of the rotatably mounted frame or turntable that carries the axle and wheels of the truck.

In the construction of my improved truck the main frame is preferably constructed in two parts, each of which may be formed in a single piece by casting, or it may be of fabricated structure. Each main frame member comprises a pair of side rails 10, a transversely disposed inner end rail 11 and a pair of inclined outer end rails 12 that converge and are united at the medial line of the truck, thereby providing a completed truck frame with pointed ends.

Arranged between the side rails 10 and at an intermediate point between the end rails 11 and 12 is a transversely disposed curved rail 13, and the curved inner edge thereof unites with the curved inner edges of the outer end rails 12 in forming a circular opening 14 in each member of the truck frame body, and which circular opening is occupied by the rotating member that serves as a supporting frame for the wheel carrying axle. Secured in any suitable manner on top of the side rails 10, and preferably at points to the sides of the circular openings 14, are blocks 15, and projecting upwardly from each block and extending through suitable openings formed in the base frame 16 of the supported car body is a pair of pins or rods 17, and positioned upon each pin and interposed between the block and the under frame of the car body is an expansive coil spring 16.

By virtue of the construction thus described the car body is yieldingly supported upon the car truck and all shocks and vibrations resulting from the passage of the truck wheels over rough portions of the track are absorbed by the springs 18. The two parts of the truck frame are rigidly secured to each other in any suitable manner, preferably by means of bolts 19 that pass through the transversely disposed inner end rails 11.

Arranged to rotate freely in each circular opening 17 is a ring-shaped frame or turn-table 20 having on its lower portion a horizontally disposed, outwardly projecting flange 21 that occupies a position beneath the parts 12 and

13 of the frame, and interposed between said flange and the frame parts 12 and 13 are anti-friction members 22 which may be either balls or rollers. Secured in any suitable manner to the under-sides of the frame members 12 and 13 are retaining blocks 23, the inner ends of which underlie the flange 21 and thus the ring-shaped frame or turntable 20 is held to rotate freely within the opening 14.

Formed in the inner edge of each ring or turntable 20 and at oppositely disposed points thereupon are openings 24 which accommodate the wheels 25 of the truck, said wheels being fixed in the usual manner upon an axle 26, and [fol. 456] the end portions of the latter being mounted in suitable journal boxes 27, and which latter are arranged on the ring frame or turntable 20 at points outside the central portions of the wheel openings 24. Arranged above the tread portion of each wheel is an arcuate brake shoe 28, the same being pivotally connected at one end of the ring-shaped frame or turntable, and the opposite end of each brake shoe is connected by means of a short vertically disposed link 29 to the upper end of transversely disposed lever 30, and which latter is fulcrumed near its inner end to a bracket 31 that is secured to the ring-shaped frame or turntable 20. The inner ends of the members of each pair of levers 30 are connected by a short link 32, and the links for the two pairs of levers are connected by flexible members such as chains or cables 33 to a brake lever 34 that is mounted on the car-body adjacent to the driver's seat, and said flexible member 33 passing over suitably located pulleys 35.

Where my improved car trucks are utilized on cars that are electrically driven suitable electric motors such as 36 are mounted on the ring frames or turntables 20 and the shafts of said motors having suitable driving connections, either sprocket chains or gearing, with the wheel carrying axles 26. Relatively heavy retractile coil springs 37 are secured at one end of the transversely disposed curved members 13 of the truck frame and at their opposite ends to the ring frames or turntables 20, said springs yieldingly retaining the turntable against rotary movement in either direction and restoring said turntables to their normal positions after they have rotated in one direction or the

other, as a result of the passage of the truck around a curved portion of the track.

Thus it will be seen that I have produced a relatively simple, strong and durable truck that is particularly applicable for use in supporting the bodies of street cars and the like, and the wheel carrying axles of said truck being mounted so that they can readily swing in either direction as the truck traverses curved portions of the track, and that all of the truck wheels are provided with simple and efficient braking means which, when set by manipulation of the lever 32, will directly engage the tread portions of the car wheels and retard the rotation thereof.

The construction of the truck in two main parts greatly facilitates manufacture, assembly, repairs and adjustments, and if either wheel carrying axle or turntable becomes broken or unfit for service it can be readily removed and replaced with a new part without necessitating the dismantling of the entire truck structure.

It will be readily understood that minor changes in the size, form and construction of the various parts of my improved street car truck may be made and substituted for those herein shown and described without departing from the spirit of the invention, the scope of which is set forth in the appended claims.

I claim:

1. In a car truck, a frame formed in two parts, each part being provided with a circular opening, a ring frame arranged for rotation in the opening in each part of the frame, wheel-carrying axles journaled in each ring-frame, and anti-friction members between each ring frame and part of the brake frame with which it is associated.

2. In a car truck, a frame formed in two parts, each part being provided with a circular opening, a ring frame arranged for rotation in the opening in each part of the frame, wheel-carrying axles journaled in each ring-frame, anti-friction members between each ring frame and part of the brake frame with which it is associated, and wheel-engaging brakes mounted on each ring frame.

3. The combination with a car truck frame having circular openings near its ends, of ring frames arranged for rotation in said openings, anti-friction bearings between

Defendants' Exhibit No. 29 457-458

O. P. SMITH.

LURE CONVEYER.

APPLICATION FILED FEB. 26, 1912

1,038,504. Patented Sept. 10, 1912.

2 SHEETS—SHEET 1

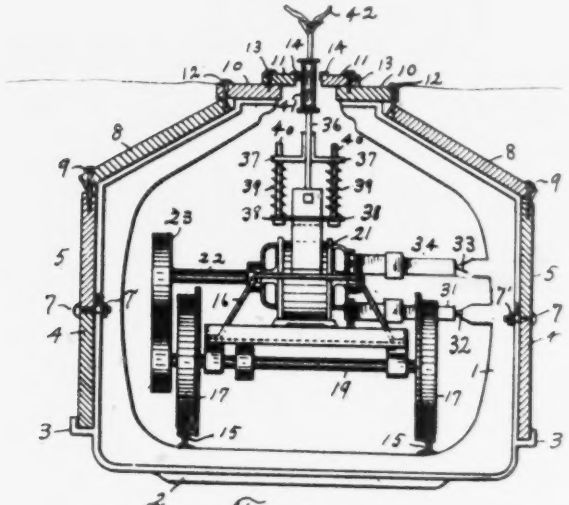


Fig. 1.

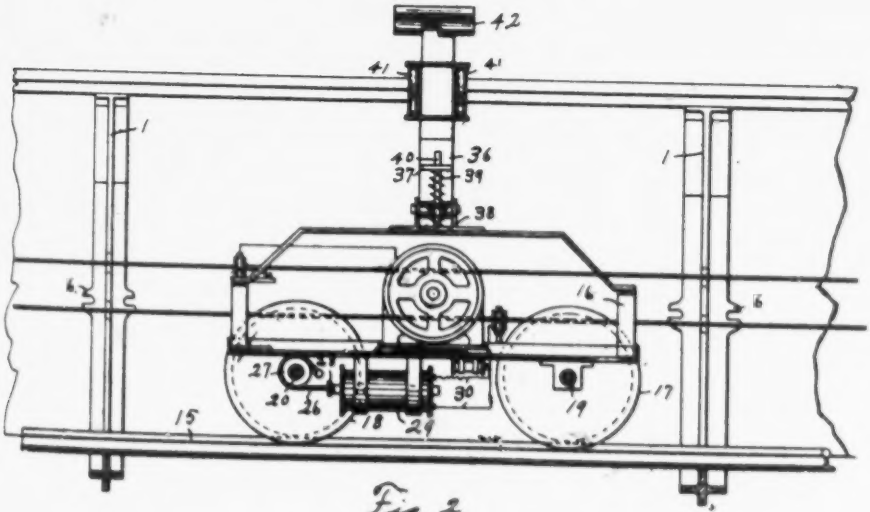


Fig. 2.

WITNESSES:
Mary Montgomery
E. Funkhauser

INVENTOR
Owen P. Smith
BY
Hardway & Cutting
ATTORNEY.

O. P. SMITH.

459-460

LURE CONVEYER.

APPLICATION FILED FEB. 20, 1911.

1,038,504.

Patented Sept. 10, 1912.

2 SHEETS-SHEET 2

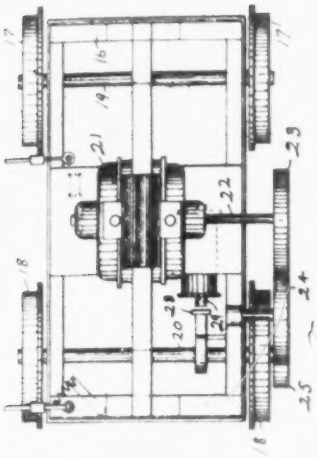


Fig. 3.

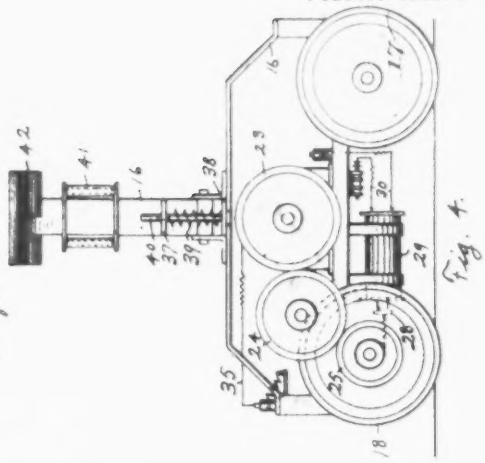


Fig. 4.

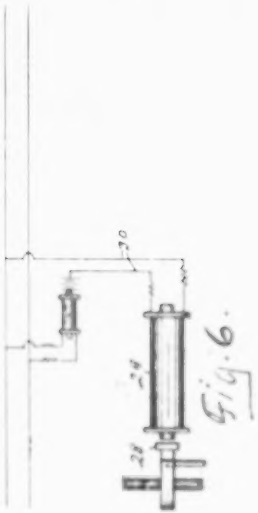


Fig. 6.

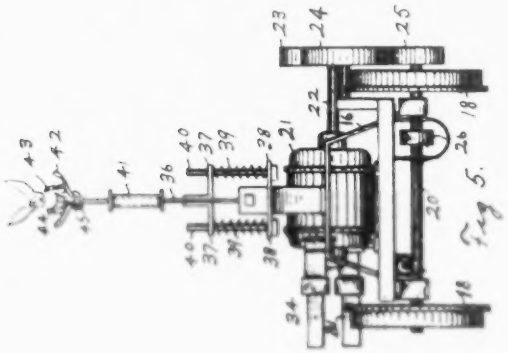


Fig. 5.

WITNESSES:

May Montgomery

E. Finkbeiner

INVENTOR

Owen P. Smith

BY

Hardway & Colby

ATTORNEYS

said ring frames and the truck frame, a wheel-carrying axle journaled on each ring frame, and yielding resistance means for restraining the ring-shaped frames against rotation.

4. The combination with a car truck frame having circular openings near its ends, of ring frames arranged for rotation in said openings, anti-friction bearings between said ring frames and the truck frame, a wheel-carrying axle journaled on each ring frame, yielding resistance means for restraining the ring-shaped frames against rotation, and braking means carried by the ring-shaped frames and adapted to engage the truck wheels.

In testimony whereof I have signed my name to this specification.

Thaddeus J. Barrow.

(Here follow drawings, side folios 457-458 and 459-460.)

[fol. 461] United States Patent Office

Owen P. Smith, of Houston, Texas

Lure-Conveyer

1,038,504. Specification of Letters Patent. Patented Sept. 10, 1912

Application Filed February 26, 1912. Serial No. 680,057

To all whom it may concern:

Be it known that I, Owen P. Smith, a citizen of the United States, residing at Houston, in the county of Harris and State of Texas, have invented certain new and useful Improvements in Lure-Conveyers, of which the following is a specification.

My invention relates to new and useful improvements in lure conveyers and has more particular relation to such devices as are intended to be used for conveying the lure used in dog races.

The object of the invention is to provide an underground track and a conveying mechanism thereon which are en-

tirely hidden from view and which carry the lure which is visible above the surface of the ground.

Another object of the invention resides in the provision of a controlling mechanism for the lure conveyer whereby the operation of the same will be under the immediate control of the operator.

With the above and other objects in view, the invention has particular relation to certain novel features of construction operation and arrangement of parts, an example of which is given in this specification and illustrated in the accompanying drawings, wherein—

Figure 1 is a front elevation of the conveyer located on the track and in the underground tunnel through which it moves. Fig. 2 is a sectional side elevation thereof with the rear wall of the tunnel removed. Fig. 3 is a plan view of the conveyer. Fig. 4 is a side elevation thereof showing the propelling mechanism. Fig. 5 is a rear view of the conveyer. Fig. 6 is a detail of the brake mechanism.

Referring now more particularly to the drawings wherein like numerals of reference designate similar parts in each of the figures, the numeral 1 refers to a girder of cast metal or some similar durable material which in plan presents the contour of a cross section of the tunnel of which it forms a part. These girders are placed a uniform distance apart along the tunnel and rest on ties 2 and form the frame work of the tunnel structure. Extending laterally from each side of the girder are the supporting hooks 3 which are designed to receive the lower edge of the side boards 4 whose upper edges support similar side boards 5, said boards 4 and 5 extending lengthwise of the tunnel and forming the sides thereof. Alined with the joint between the boards 4 and 5 on each side of the girders are laterally projecting fingers 6, and a suitable bolt 7 passes through the joint and its head engages against the adjacent edges of the boards 4 and 5; said bolt extending through between the fingers 6 and being secured in place by means of the nut 7'. The sides of the girder stand at rightangles to the bottom thereof up to near the surface of the ground and then converge inwardly toward each other but the free ends do not quite meet, thus forming a top which slopes downwardly in opposite directions and on each side of the tunnel and resting upon the sloping top-portion of the girders are the lengthwise extending boards 8, whose

lower edges are secured to the boards 5 by means of the spikes 9, thus forming a roof-like covering for the tunnel, the comb of which is completed by means of the boards 10 and 11, the former of which are spiked to the boards 8 by means of spikes 12 and the latter of which are adjustably secured to the former by means of set-screws 13.

It will be observed that the sides and top of the tunnel are thus formed of longitudinally extending timbers forming a tunnel with a sloping roof and having the roof members arranged in pairs on each side but the extreme top members 11 do not quite meet, thus forming a longitudinal passageway along the top of the tunnel for a purpose to be herinafter set forth. The top members 11 are flush with the surface of the ground and their inner edges are lined with plates 14 to protect the same against wear. Within the tunnel is the conveyer proper which runs upon the rails 15 forming the track. The conveyer consist- of frame work 16 mounted upon front and rear carrier wheels 17 and 18 rigidly mounted upon their respective axles 19 and 20. This conveyer carries the motor 21 whose drive shaft 22 carries a rigidly mounted gear wheel 23 which meshes with the gear wheel 24 which in turn meshes with the gear wheel 25 rigidly mounted upon axle 20 and through this gear mechanism motion may be imparted from the motor to the carrier wheels of the conveyor.

[fol. 462] The numeral 26 refers to a band brake, one end of which is secured to the frame work of the conveyer. This brake surrounds a disk 27 rigidly mounted upon the shaft 20 and its free end has a magnet 28 alined with a magnet 29 suspended from the conveyer frame and charged through wires 30. When the magnet 29 is charged it operates through its attraction for the magnet 28 to set the brake on the disk 27 and when the electricity is cut off from the wires 30 the brake 26 is released. The wires 30 communicate with a brush 31 which in turn contacts with a feed wire 32 which extends entirely along the wall of the tunnel. A similar feed wire 33 extends along the wall of the tunnel and is arranged to contact with a brush 34 which in turn conducts electricity to the motor through the wires 35.

The wires 32 and 33 are connected to a main feed wire (not shown) by switch mechanism such that when the current is connected with one wire it will be disconnected

from the other with the end in view that when the motor is started the brake will be released and vice versa.

Extending upwardly from the central portion of the frame 16 is a support 36 which has a hinge near the bottom thereof so as to permit the top of the support to move laterally in each direction and secured to the movable and stationary parts of this support above and below the hinge and extending laterally therefrom are the respective arms 37 and 38, interposed between the free ends of which are strong coil springs 39 surrounding the stays 40 which are secured to the arms 37 and have a sliding engagement with the arms 38. This construction operates to normally hold the support 36 in vertical position but at the same time permits the lateral movement thereof. This support extends up through the passageway along the top of the tunnel and moves along as the conveyer moves and is provided with the roller bearings 41 in the front and rear thereof which minimize the friction against the plates 14. The top of the support 36 is divided forming a Y in which an oblong platform 42 rests. This platform is provided to receive an artificial animal 43 which has a metallic plate 44 secured to its body and a set screw 45 passes through one arm of the Y carried by the top of the support 36 and also the platform 42 and is tapped into the plate 44 and secures the platform and lure in place.

The tunnel is usually constructed in the shape of a circle or ellipse so as to obviate any short angles or turns and thus minimize the friction of the support 36 against the sides of the passageway through which it extends.

This device is intended to be used for substituting an inanimate lure for a live animal, thus retaining all of the exciting and advantageous features of the sport but eliminating the inhuman features connected with the use of a live animal for the race.

What I claim is:

1. A device of the character described composed of a rack and a tunnel inclosing the same, a conveyer arranged to move on said track, a motive mechanism for said conveyer, a flexible support carried by the conveyer and projecting through a lengthwise passageway along the upper side of the tunnel, rotatable bearings carried by the support and operating against the sides of said passage-

way and a lure mounted upon the upper end of said support and moving lengthwise of the tunnel and above the same.

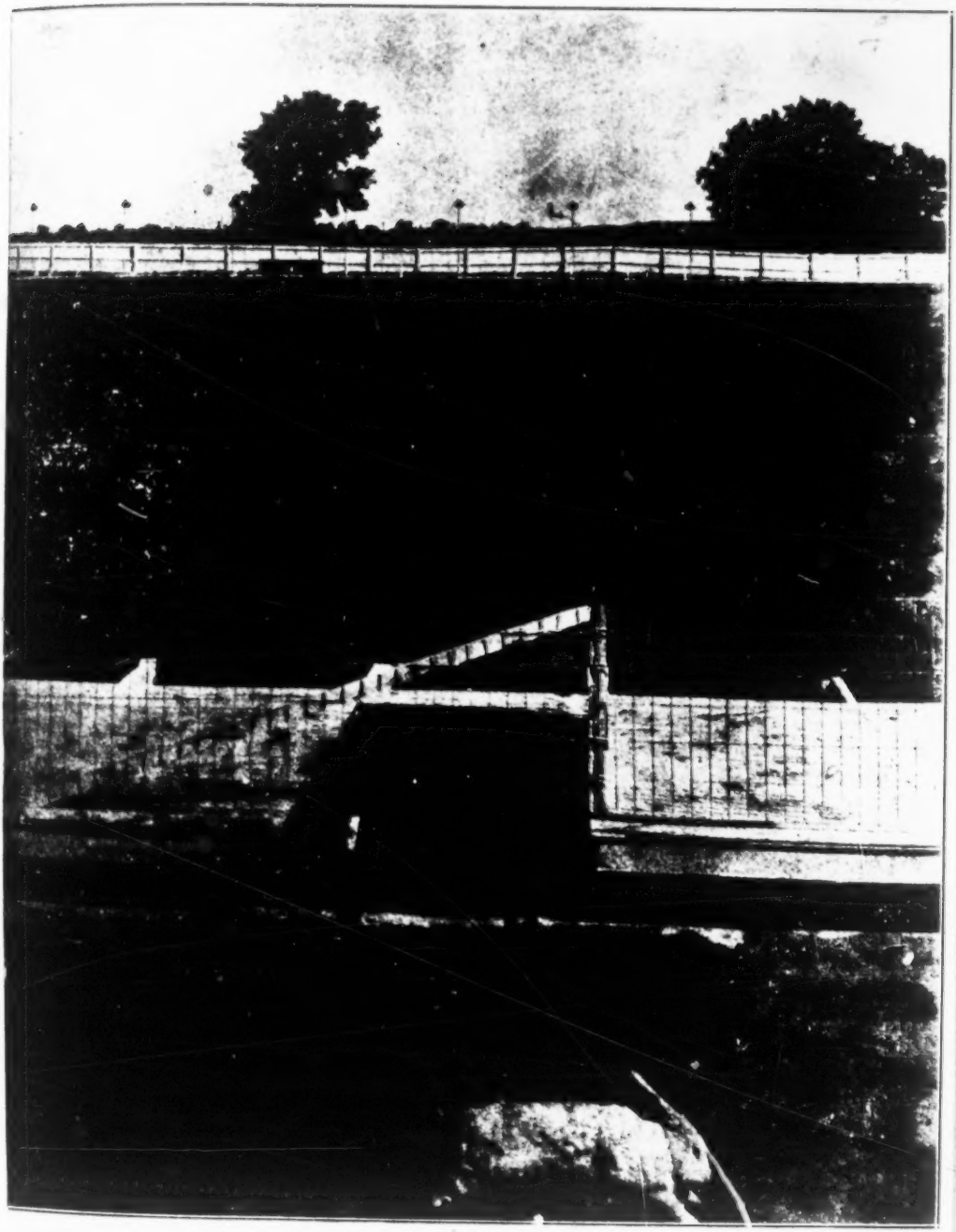
2. A device of the character described composed of a tunnel and a track in the bottom thereof, a conveyer arranged to move on said track, a motive mechanism for said conveyer, a suitable brake mechanism provided therefor for the purpose of regulating the movement thereof, a support yieldably secured to the conveyer and having lateral movement relative thereto and projecting through a lengthwise passageway along the upper side of the tunnel anti-friction members carried by the support and operating against the sides of the passageway and a lure mounted upon the upper end of said support.

3. A device of the character described, composed of a tunnel having a lengthwise passageway along the upper side thereof, a track in the bottom of said tunnel, a conveyer arranged to move on said track, a motive mechanism for said conveyer, a suitable brake mechanism provided for the purpose of regulating the movement thereof, a support yieldably secured to the conveyer and having lateral movement relative thereto and projecting through the lengthwise passageway of the tunnel, suitable bearing members carried by said support and operating against the sides of the passageway, a platform carried by the upper end of said support and a lure secured to said platform.

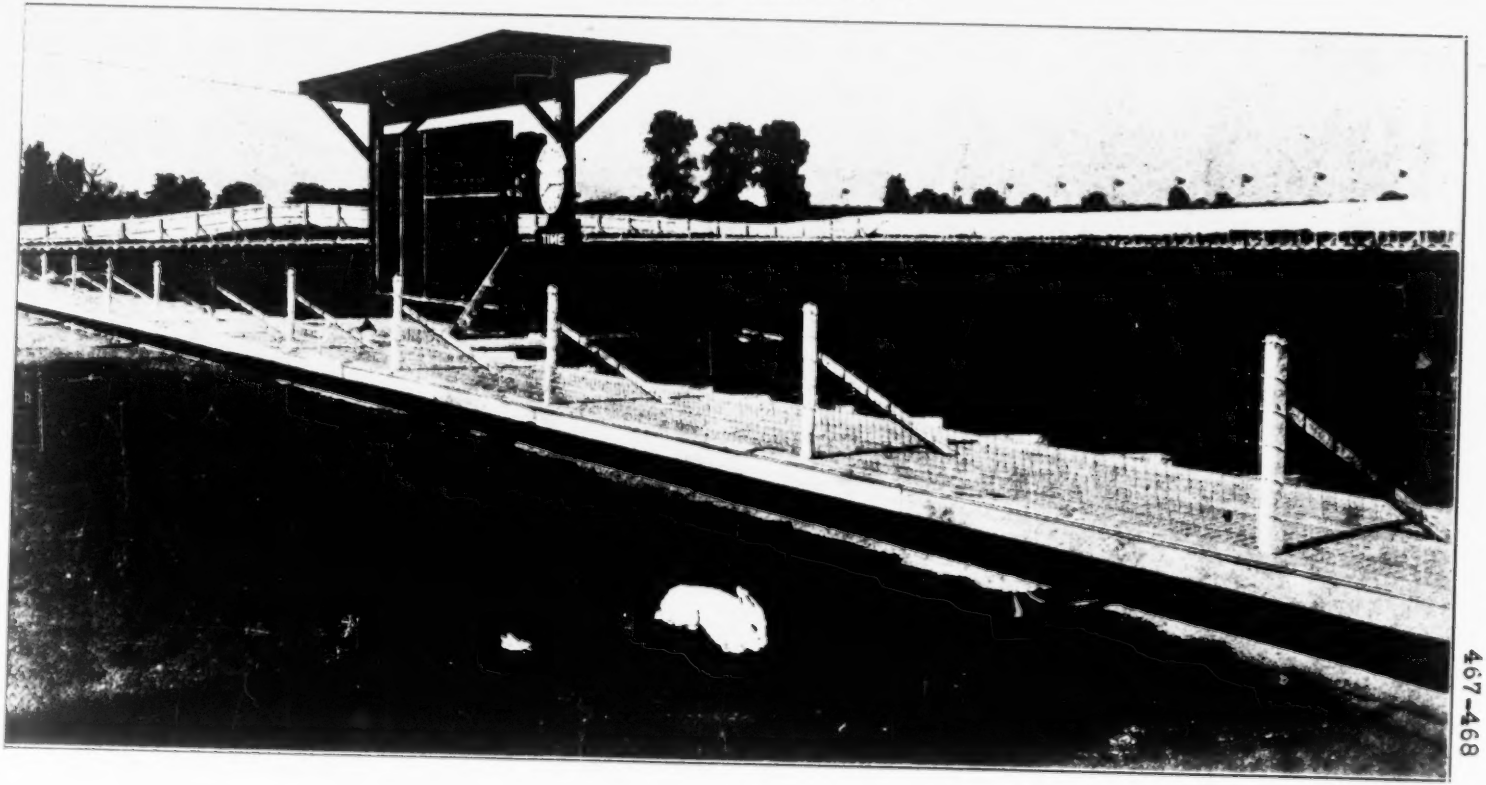
4. In a device of the character described, a conveyer comprising a frame work and carrier wheels, upon which the frame work is mounted, a motive mechanism operatively connected with the carrier wheels, a yieldable support upstanding from the frame work, laterally extending arms on each side of said support and resilient members interposed between the free ends of said arms, a platform carried by the upper ends of said support and a lure secured on said platform.

5. A device of the character described, including a tunnel and a track located there——

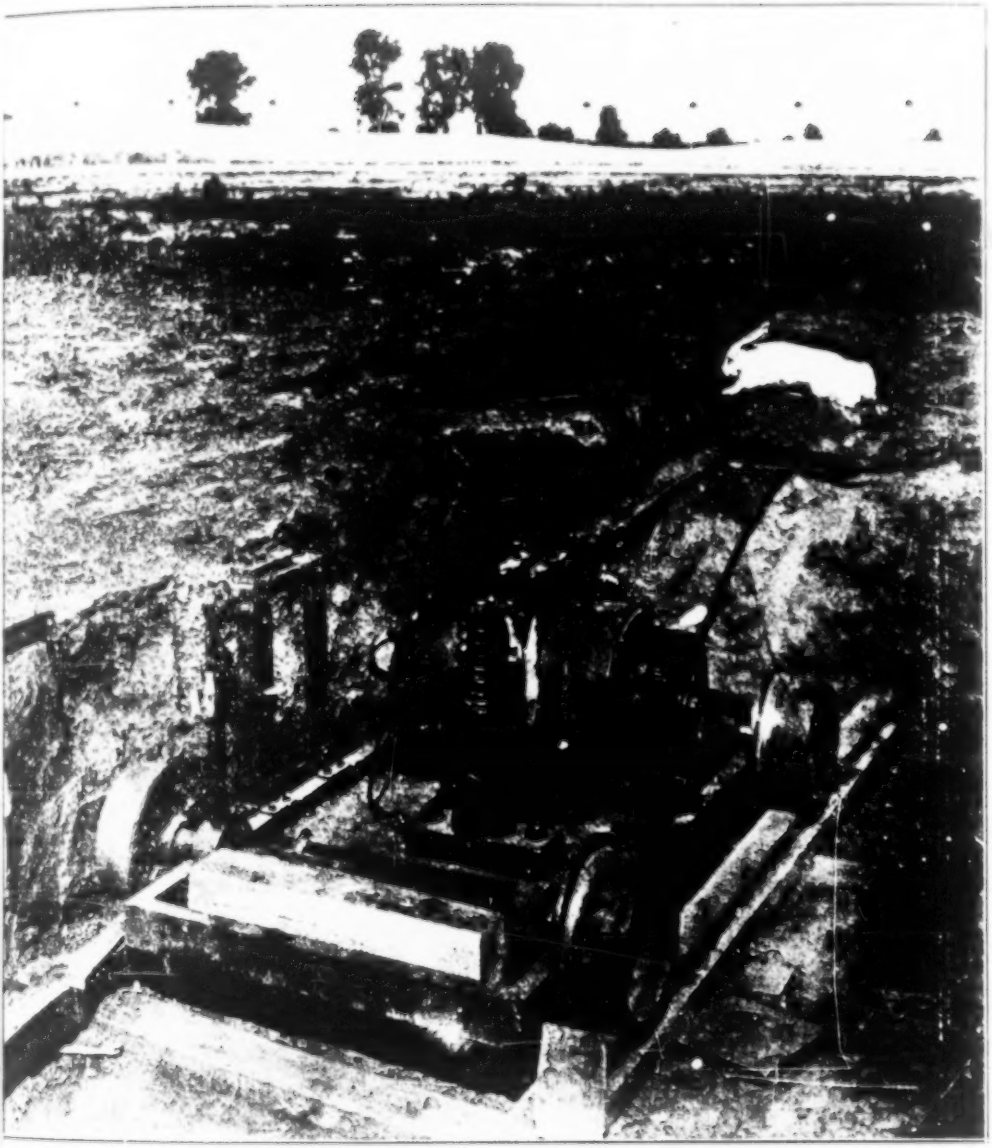
[fol. 463 & 464] track, a motive mechanism for said conveyer, a support hinged to the conveyer and laterally mov-



Defendants' Exhibit No. 31.



467-468



Anderson, and Messrs. M'Caleb & M'Caleb, solicitors and counsel for the plaintiff:

Please be advised that the defendants in the above entitled cause, appeal from the decisions rendered on ——, ——.

Magic City Kennel Club, Inc., et al., by Arthur C. Brown, Solicitor and Counsel for the Defendants.

Dated 1/11, 1929.

Service of the above entitled notice acknowledged this 1 day of January, 1929.

Hunt & Eagleton, Solicitors and of Counsel for the Plaintiff.

[File endorsement omitted.]

[fol. 472] In United States District Court

Petition for Appeal—Filed Jan. 11, 1929

The above named defendants feeling themselves aggrieved by the decree made and entered in this cause on the 15th day of December, 1928, do hereby appeal from said decree to the United States Circuit Court of Appeals for the Eighth Circuit for the reasons specified in the assignment of errors, which is filed herewith; and defendants pray that their appeal be allowed, that citation issue as provided by law, that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals, for the Eighth Circuit, and that a supersedeas be awarded staying said decree as to the matters therein referred to.

Arthur C, Brown, Solicitor and Counsel for the Defendants.

[File endorsement omitted.]

In United States District Court

Assignment of Errors—Filed Jan. 11, 1929

Now comes the defendants in the above entitled cause, and say that the decree entered therein on the 15th day of December, 1928, is erroneous and unjust to defendants, and contains manifest error, which defendants assign as follows:

(1) That the court erred in overruling defendants' exceptions to the report of Joe T. Dewberry, Special Master, and in approving said report.

(2) That the court erred in finding that the following United States Letters Patent in suit, to-wit:

No. 1,379,224, of May 24, 1921, to Owen P. Smith,

No. 1,507,440, of Sept. 2, 1924, to Owen P. Smith,

No. 1,630,812, of May 24, 1927, to Owen P. Smith,

are good and valid in law.

(3) That the court erred in finding that the said defendants, Magic City Kennel Club, Incorporated, and John Shaughnessy, have, or either of them, has infringed said Letters Patent No. 1,379,224, as to claims numbered 1 and 2 thereof.

[fol. 473] (4) That the court erred in finding that the said defendants, Magic City Kennel Club, Incorporated, and John Shaughnessy, have, or either of them, has infringed said Letters Patent No. 1,507,440, as to claims numbered 1, 2 and 3 thereof.

(5) That the court erred in finding that the said defendants, Magic City Kennel Club, Incorporated, and John Shaughnessy, have, or either of them, has infringed said Letters Patent No. 1,630,812, as to claims numbered 1, 2 and 3 thereof.

(6) That the court erred in decreeing that the said defendants, Magic City Kennel Club, Incorporated, and John Shaughnessy, and each of them, and each of their officers, agents, employees and attorneys, be perpetually enjoined and restrained, and perpetually enjoining and restraining the same, from making or causing to be made, selling or causing to be sold, and using or causing to be used, di-

rectly or indirectly, the invention and subject-matter of said Letters Patent No. 1,379,224, as to claims numbered 1 and 2 thereof.

(7) That the court erred in decreeing that the said defendants, Magic City Kennel Club, Incorporated, and John Shaughnessy, and each of them, and each of their officers, agents, employees and attorneys, be perpetually enjoined and restrained, and perpetually enjoining and restraining the same, from making or causing to be made, selling or causing to be sold, and using or causing to be used, directly or indirectly, the invention and subject-matter of said Letters Patent No. 1,507,140, as to claims numbered 1, 2 and 3 thereof.

(8) That the court erred in decreeing that the said defendants, Magic City Kennel Club, Incorporated, and John Shaughnessy, and each of them, and each of their officers, agents, employees and attorneys, be perpetually enjoined and restrained, and perpetually enjoining and restraining the same, from making or causing to be made, selling or causing to be sold, and using or causing to be used, directly or indirectly, the invention and subject-matter of said Letters Patent No. 1,630,812, as to claims numbered 1, 2 and 3 thereof.

(9) That the court erred in decreeing that the said defendants, Magic City Kennel Club, Incorporated, and John Shaughnessy, be perpetually enjoined and restrained from selling or disposing of the apparatus or devises used by [fol. 474] defendant Magic City Kennel Club, Incorporated, and that said defendant Magic — Kennel Club, Incorporated, be ordered to deliver up to be destroyed or impounded the said apparatus or devices held to be an infringement of the Letters Patent aforesaid.

(10) That the court erred in decreeing that the plaintiff recover of the defendants, Magic City Kennel Club, Incorporated, and John Shaughnessy, or either of them, the profits they may have derived from the use of said alleged infringing apparatus and devices, and in referring this cause to a master to take and state an account of the profits which said defendants, or either of them, have or has made by reason of said alleged infringement.

(11) That the court erred in decreeing that the plaintiff have and recover judgment against the defendant Magic City Kennel Club, Incorporated, on the bond given under the order of said court of date of September 24, 1927, and filed in this cause on September 30, 1927, and against the National Surety Company of New York, surety on said bond, in the sum of Twenty Thousand and no/100 Dollars ($20,000.00) liquidated damages, in accordance with the terms of said bond and the order of court under which said bond was given and filed.

12. That the court erred in decreeing that the plaintiff recover of defendants all costs to be taxed in this cause.

(13) That the court erred in overruling defendants' motion to discharge and vacate the order requiring bond in lieu of preliminary injunction in this cause.

Wherefore, defendants pray this court to reverse and set aside the decree herein and render judgment for the defendants.

Arthur C. Brown, Solicitor and Counsel for the Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed Jan. 11, 1929

Defendants' petition for appeal filed herein is hereby granted, and said appeal is hereby granted, and a super-
[fols. 475 & 476] sedeas is awarded staying the de-ree entered herein December 15, 1928, this order to be effective upon defendants giving bond conditioned as required by law and acceptable to this court in the sum of Fifteen Thousand and no/100 Dollars ($15,000.00), to secure plaintiff in respect to costs and in respect to damages and profits because of infringement of the Smith patent, Nos. 1,379,-224, 1,507,440 and 1,630,812, and this bond is in addition to the bond heretofore given in the sum of Twenty Thousand ($20,000.00) Dollars to cover liquidated damages; and

the supersedeas being conditioned upon defendants exercising due diligence in the prosecution of their appeal.

F. E. Kennamer, Judge United States District Court.

Tulsa, Oklahoma. January 11th, 1929.

O. K. as to form: Hunt & Eagleton, Solicitors for Plaintiff. Arthur C. Brown, per C. W. J., Solicitor for Defendants.

[File endorsement omitted.]

Bond on appeal for $15,000, approved and filed January 25, 1929, omitted in printing.

[fol. 477] In United States District Court

Stipulation to Include Certain Exhibits in Printed Record—Filed Feb. 24, 1929

It is hereby stipulated and agreed by and between the parties to the above entitled cause, by their respective counsel, that the following exhibits of plaintiff and of defendants be printed with the record:

Plaintiff's Exhibit No. 1—Copy of Letters of Administration.

Plaintiff's Exhibit No. 2—Copy of Smith patent No. 1,379,224.

Plaintiff's Exhibit No. 3—Copy of Smith Patent No. 1,507,440.

Plaintiff's Exhibit No. 4—Copy of Smith Patent No. 1,630,812.

Plaintiff's Exhibit No. 5—Sketch by witness, Thomas A. Keen.

Plaintiff's Exhibit No. 7—Sketch by witness, Clement O. Gittinger.

Plaintiff's Exhibit No. 8—Copy of File Wrapper Creveling Patent. No. 1,481,313.

Defendants' Exhibit No. 2—Copy of Shaughnessy Patent No. 1,628,518.

Defendants' Exhibit No. 4—Copy of Patent to Creveling No. 1,481,313.

Defendants' Exhibit No. 5—File Wrapper and Contents Smith Patent No. 1,379,224.

Defendants' Exhibit No. 6—File Wrapper and Contents Smith Patent No. 1,507,440.

[fol. 478] Defendants' Exhibit No. 7—File Wrapper and Contents Smith Patent No. 1,630,812.

Defendants' Exhibit No. 8—Copy of Patent to Pinard No. 362,396.

Defendants' Exhibit No. 9—Copy of Patent to Walsh No. 611,876.

Defendants' Exhibit No. 10—Copy of Patent to Everett No. 1,052,807.

Defendants' Exhibit No. 11—Copy of Patents to Hinds (British) No. 4274 of 1883.

Defendants' Exhibit No. 12—Copy of Patent to Vance No. 881,505.

Defendants' Exhibit No. 13—Copy of Patent to Fisher No. 1,228,011.

Defendants' Exhibit No. 14—Copy of Patent to Dodge No. 529,162.

Defendants' Exhibit No. 15—Copy of Patent to Daniels No. 583,109.

Defendants' Exhibit No. 16—Copy of Patent to Majno No. 737,257.

Defendants' Exhibit No. 17—Copy of Patent to Gaynor No. 811,284.

Defendants' Exhibit No. 18—Copy of Patent to Elder, et al., No. 816,081.

Defendants' Exhibit No. 19—Copy of Patent to Seede No. 886,627.

Defendants' Exhibit No. 20—Copy of Patent to Ricks No. 1,024,283.

Defendants' Exhibit No. 21—Copy of Patent to Bertram No. 729,120.

Defendants' Exhibit No. 22—Copy of Patent to Fairfax No. 60,868.

Defendants' Exhibit No. 23—Copy of Patent to DeHuff No. 64,640.

Defendants' Exhibit No. 24—Copy of Patent to Robinson No. 243,796.

Defendants' Exhibit No. 25—Copy of Patent to Towell No. 245,414.

Defendants' Exhibit No. 26—Copy of Patent to Allen No. 532,937.

Defendants' Exhibit No. 27—Copy of Patent to Towle No. 1,061,146.

[fol. 479] Defendants' Exhibit No. 28—Copy of Patent to Barrow No. 1,412,383.

Defendants' Exhibit No. 29—Copy of Patent to Smith No. 1,038,504.

Defendants' Exhibit No. 30—Photograph of Defendants' Housing and Lure Arm.

Defendants' Exhibit No. 31—Photograph of Defendants' Lure Arm.

Defendants' Exhibit No. 32—Photograph of Defendants' Traction Car.

Hunt & Eagleton, E. Howard McCaleb, Counsel for the Plaintiff. Arthur C. Brown, Counsel for the Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER FOR TRANSMISSION OF PHYSICAL EXHIBITS TO CIRCUIT COURT OF APPEALS—Filed Feb. 25, 1929

It is hereby ordered that the clerk of this court transmit to the United States Circuit Court of Appeals the original transcript of testimony filed herein, together with the physical exhibits offered in evidence at the hearing of this cause and bound with said transcript of testimony, and

It is further ordered that the clerk of this court transmit to the United States Circuit Court of Appeals all physical exhibits offered in evidence at the hearing of this cause, the transmission of which to the said Court of Appeals has not been heretofore or otherwise ordered.

F. E. Kennamer, Judge United States District Court.

Tulsa, Oklahoma, February 25th, 1929.

[File endorsement omitted.]

[fol. 480] Citation in usual form, showing service on H. Howard McCaleb et al., filed January 14, 1929, omitted in printing.

In United States District Court

Election as to Printing of Record—Filed Feb. 7, 1929

Defendant-appellants in the above entitled cause hereby elect to have the record on appeal therein printed under the [fol. 481] supervision of the clerk of the United States District Court for the Northern District of Oklahoma.

Arthur C. Brown, Counsel for Defendant-Appellants.

[File endorsement omitted.]

In United States District Court

Order Extending Time—Filed Feb. 25, 1929

On application of defendant-appellants herein for additional time for docketing the case and filing the record thereof, and for good cause shown:

It is hereby ordered:

That the time for docketing the case and filing the record thereof in the Court of Appeals be enlarged to and including April 11, 1929.

F. E. Kennamer, Judge United States District Court.

February 25, 1929.

[File endorsement omitted.]

In United States District Court

Order Extending Time—Filed Mar. 26, 1929

On application of defendant-appellants herein for additional time for docketing the case and filing the record thereof, and for good cause shown:

It is hereby ordered:

That the time for docketing the case and filing the record thereof in the Court of Appeals be enlarged to and including May 11, 1929.

F. E. Kennamer, Judge United States District Court.

March 26th, 1929.

OK. Hunt & Eagleton, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 482] In United States District Court

Substitute Precipe for Transcript—Filed Feb. 25, 1929

The clerk will prepare a transcript of this cause pursuant to the appeal filed by defendants January 11, 1929, and will include in such transcript the following papers and records, and no others:

1. Bill of complaint.
2. Order for hearing temporary injunction.
3. Affidavit of George Sawyer.
4. Affidavit of Lee Fiedler.
5. Affidavit of F. Stewart.
6. Affidavit of Murray Kemp.
7. Affidavit of Thomas W. Spencer.
8. Affidavit of N. Hayden.
9. Affidavit of P. J. Sullivan.
10. Affidavit of D. E. Baker.
11. Affidavit of Frank Margeson.
12. Affidavit of Clement O. Gittinger.
13. Affidavit of Thomas A. Keen.
14. Order granting temporary injunction.
15. Injunction bond.
16. Stipulated damage bond.
17. Plaintiff's motion for order of cancellation of bond.
18. Order cancelling plaintiff's bond and suspending injunction.
19. Separate answer of J. W. Colley.
20. Defendants' answer.
21. Order for leave to file amended answer.
22. Joint and several amended answer.

23. Separate and amended answer.

24. Stipulation regarding exhibits.

25. Order appointing Joe T. Dewberry special master.

26. Motion to discharge and vacate order requiring bond in lieu of preliminary injunction.

27. Notice of lodgment of testimony in narrative form.

28. Transcript of testimony in narrative form.

29. Plaintiff's Exhibit No. 1, copy of letters of administration of Hannah M. Smith, Administratrix of the estate of Owen P. Smith.

[fol. 483] 30. Plaintiff's Exhibit No. 2, copy of Smith Patent No. 1,379,224.

31. Plaintiff's Exhibit No. 3, copy of Smith Patent No. 1,507,440.

32. Plaintiff's Exhibit No. 4, copy of Smith Patent No. 1,630,812.

33. Plaintiff's Exhibit No. 5, sketch by witness, Thomas A. Keen.

34. Plaintiff's Exhibit No. 7, sketch by witness, Clement O. Gittinger.

35. Plaintiff's Exhibit No. 8, file wrapper and contents of Creveling Patent No. 1,481,313.

36. Defendants' Exhibit No. 2, copy of Shaughnessy Patent No. 1,628,518.

37. Defendants' Exhibit No. 4, copy of Creveling Patent No. 1,481,313.

38. Defendants' Exhibit No. 5, file wrapper and contents Smith Patent No. 1,379,224.

39. Defendants' Exhibit No. 6, file wrapper and contents Smith Patent No. 1,507,440.

40. Defendants' Exhibit No. 7, file wrapper and contents Smith Patent No. 1,630,812.

41. Defendants' Exhibit No. 8, copy of patent to Pinard No. 362,396.

42. Defendants' Exhibit No. 9, copy of patent to Walsh No. 611,876.

43. Defendants' Exhibit No. 10, copy of patent to Everett No. 1,052,807.

44. Defendants' Exhibit No. 11, copy of patent to Hinds (British) No. 4274 of 1883.

45. Defendants' Exhibit No. 12, copy of patent to Vance No. 881,505.

46. Defendants' Exhibit No. 13, copy of patent to Fisher No. 1,228,011.

47. Defendants' Exhibit No. 14, copy of patent to Dodge No. 529,162.

48. Defendants' Exhibit No. 15, copy of patent to Daniels No. 583,109.

49. Defendants' Exhibit No. 16, copy of patent to Majno No. 737,257.

50. Defendants' Exhibit No. 17, copy of patent to Gaynor No. 811,284.

[fol. 484] 51. Defendants' Exhibit No. 18, copy of patent to Elder, et al., No. 816,081.

52. Defendants' Exhibit No. 19, copy of patent to Seede No. 886,627.

53. Defendants' Exhibit No. 20, copy of patent to Ricks No. 1,024,283.

54. Defendants' Exhibit No. 21, copy of patent to Bertram No. 729,120.

55. Defendants' Exhibit No. 22, copy of patent to Fairfax No. 60,868.

56. Defendants' Exhibit No. 23, copy of patent to DeHuff No. 64,640.

57. Defendants' Exhibit No. 24, copy of patent to Robinson No. 243,796.

58. Defendants' Exhibit No. 25, copy of patent to Towell No. 245,414.

59. Defendants' Exhibit No. 26, copy of patent to Allen No. 532,937.

60. Defendants' Exhibit No. 27, copy of patent to Towle No. 1,061,146.

61. Defendants' Exhibit No. 28, copy of patent to Barrow No. 1,412,383.

62. Defendants' Exhibit No. 29, copy of patent to Smith No. 1,038,504.

63. Defendants' Exhibit No. 30, photograph of defendants' housing and lure arm.

64. Defendants' Exhibit No. 31, photograph of defendants' lure arm.

65. Defendants' Exhibit No. 32, photograph of defendants' traction car.

66. Report of special master.

67. Defendants' exceptions to the master's report.

68. Order overruling motion to discharge and vacate order requiring bond in lieu of preliminary injunction.

69. Decree.

70. Notice of appeal.
71. Petition for appeal.
72. Assignment of errors.
73. Order allowing appeal.
74. Bond and order of approval.
75. Citation.

[fol. 485] 76. Substitute præcipe for transcript.

77. Election as to printing of record.
78. Stipulation to include certain exhibits in printed record.
79. Order for transmission of physical exhibits to Circuit Court of Appeals.
80. Order approving statement of evidence.
81. Certificate of Evidence.
Order extending time.
82. Certificate of clerk.

The Magic City Kennel Club, Inc., and John Shaughnessy, by Arthur C. Brown, Counsel for Defendants.

Service of copy of substitute præcipe of the above entitled cause acknowledged this 25 day of February, 1929.

Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, by E. Howard McCaleb, Hunt & Eagleton, Counsel for the Plaintiff.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

(Here follows drawing, side folio 486.)

[fol. 486½] Library, U. S. Patent Office, Aug. 10, 1896

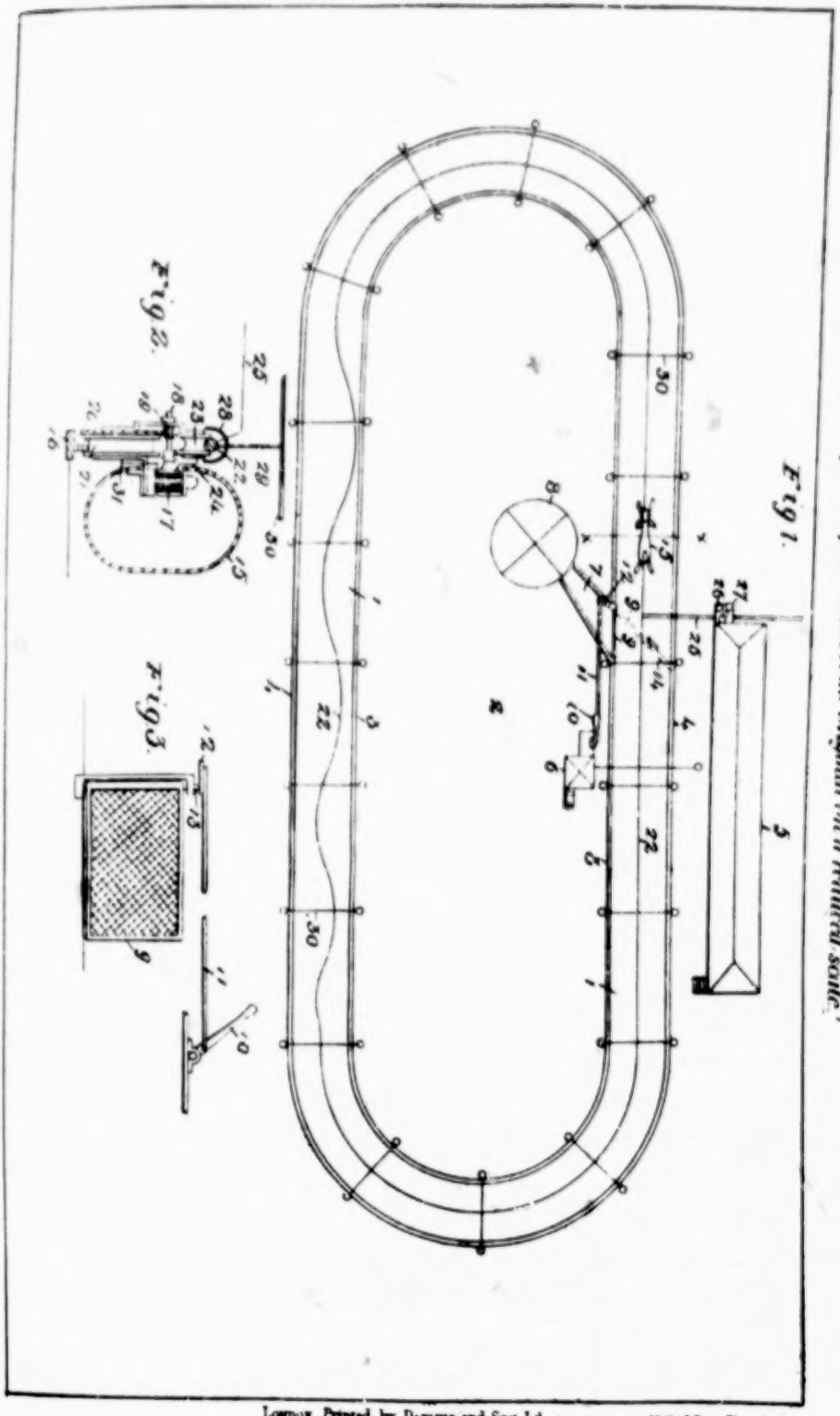
No. 9058. A. D. 1896

Date of Application, 29th Apr., 1896—Accepted, 4th July, 1896

Complete Specification

Improvements in and Relating to Coursing or like Sports

I, Stephen Ellis Moss, of Cleburne, Johnson County, State of Texas, United States of America, Gentlemen do



[This Drawing is a reproduction of the Original on a reduced scale.]

London: Printed by DARLING and Son Ltd.
for Her Majesty's Stationery Office. 1896.
Malby & Sons Photo-Litho.

hereby declare the nature of this invention and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement:—

My invention has relation to improvements in race courses or race tracks and consists in the novel arrangement and combination of parts to be more fully hereinafter described and pointed out in the claims.

In the drawings

Fig. 1 is a plan diagrammatic view of a race track provided with my improvements;

Fig. 2 is a detail transverse section on the line x—x of Fig. 1, taken through the body of the "dummy" animal propelled along the track; and

Fig. 3 is an elevation in detail of the gate swung in the path of the track for the interception of the live animals giving chase to the dummy.

The object of my invention is to construct a race course in which dummies or artificial animals may be substituted for the natural ones, a particular object being to substitute a dummy jack rabbit for the live rabbit on a course or race where such rabbit is pursued or chased by hounds or other dogs; and as such a rabbit under my present invention is given a speed of travel greater than that which the dogs can ever attain, provision is made to intercept or cut off the dogs at the proper moment, permitting them to enter their kennels before they become too much exhausted in attempting to catch the dummy. It is a well known fact that a jack rabbit is a very tender animal and more or less stupid; and as its eyes naturally bulge out from their sockets, these organs are apt to become injured should the rabbit inadvertently or in the heat of the race run against the wall or fence enclosing the race or track. To avoid these dangers and yet preserve the natural features of the sport, I substitute for the live rabbit, a dummy or stuffed rabbit, and provide suitable mechanism for impelling such dummy along the race course. The preferred form of mechanism to accomplish these results is an electric propelling device of the order of that employed in the propulsion of electric cars, viz., an electric trolley system. In detail the improved track may be described as follows:

Referring to the drawings, 1 represents a race course or track of approximately a three-quarter mile stretch, 2 the center field thereof, and 3 and 4 respectively the inner and outer walls and fences between which the cours or track is confined, the track being wide enough to admit of several hounds or other species of dog. 5 represents the grand stand, and 6 the judges' stand located within the center field. Leading from the wall 3 to one side of the judge's stand and approximately opposite one end of the grand stand, is a chute 7 leading to a kennel 8 for the dogs. The opening to the chute is controlled by a swinging gate or door 9 hinged at the entrance to the chute, the gate being adapted to be operated from the judges' stand by a controlling lever 10 pivoted at its base, and connected by a link 11 to an arm 12 carried at one end of the hinge rod 13 of the gate. By manipulating the controlling lever 10 in one direction or the other, the gate may be swung to either close or open the entrance to the chute from the race track, at the will of the operator. The door 9 is adapted when swung open to close against the free edge of a wall or fence 14 projecting at an inclined angle from the wall 4, the object of closing the gate against such wall 4 being to intercept the dogs and cause them to enter the chute 7 and enter the kennel 8, before the dogs come into actual contact with the dummy rabbit and discover its artificial nature, and before the dogs become too much fatigued in attempting to catch the dummy.

The track or rail on which the artificial rabbit 15 is impelled, is preferably in the form of a rail 16 disposed approximately medially between the walls 3 and 4, but also adapted to take a sinuous or wave course as seen in the diagrammatic view in Fig. 1, so that the dummy may imitate as closely as possible the course of the natural animal. The electric motor 17 forms part of or is carried by the dummy animal or rabbit, the shaft 18 of the motor carrying a terminal pinion 19 meshing with a gear-wheel 20 secured to or forming part of the travelling and supporting wheel 21 which has a peripheral groove embracing the rail. The current is led from the motor to the wheel 21 through the wire 31 when it is grounded through the rail 16, the current first entering the motor through the trolley wire 22, trolley wheel 23, and connecting wire 24, the trolley wire

receiving its current from the shunt wire 25 leading from any suitable central station. The grand stand is provided with a switch mechanism 26 by the turning of the lever 27 of which to different degrees or notches, the intensity of the current propelling the rabbit can be varied, thus varying the speed of the rabbit. The race is made the more interesting in that the speed of the dummy rabbit can be increased to such a degree that the dogs will never overtake the dummy; and to avoid any danger of the dogs coming in contact with or overtaking the dummy, they are cut off by the swinging gate at the proper moment and made to enter the kennel located in the center field.

To avoid any danger of the dogs coming in contact with the live trolley wire, I cover the full length of the wire with a hood 28 of wood or other non-conducting material, the same being provided with suitable openings to allow for the fastening to the wire of the lower ends of the vertical members 29 depending from the guy rods 30 stretched at intervals between the walls 3 and 4 of the race course.

Having now particularly described and ascertained the nature of my said invention, and in what manner the same is to be performed, I declare that what I claim is,

1. In a race course, a suitable track or race for the entry of live racing animals, and means forming a part of or disposed along said race for guiding and impelling artificial or dummy animals in advance of the living animals giving chase, substantially as set forth.

2. In a race course a suitable track or race for the entry of live race animals, means forming a part of or disposed along said race for guiding the impelling artificial or dummy animals in advance of the living animals giving chase, and suitable means for intercepting the live animals before the same overtake the dummies or before they become too exhaustive, substantially as set forth.

3. In a race course, a suitable track or race for the entry of live race animals, means forming a part of or disposed along said race for guiding and impelling artificial or dummy animals in advance of the living animals giving chase and at variable speeds, and suitable means for inter-

cepting the live animals before the same overtake the dummies, substantially as set forth.

4. A race course comprising a suitable course or race, bounding walls for the same, a center field enclosed by the track, a chute leading from the race to the center field, a kennel at the further end of the chute, a wall projecting from the outer wall of the race a suitable distance across the width of the race, a gate hinged to the opposite wall and adapted to be swung alternately to either close the mouth of the chute or open the latter by closing against the free edge of the projecting wall and thus intercepting the animals giving chase and obliging them to enter the kennel, a suitable rail or track forming a part of the race and adapted to guide a dummy animal, and suitable means for impelling the dummy on the rail in advance of the live animals giving chase, substantially as set forth.

Dated this 29th day of April, 1896.

F. Wise Howorth, 46, Lincoln's Inn Fields, London, W. C., Agent for the Applicant.

London: Printed for Her Majesty's Stationery Office, by Darling & Son, Ltd.—1896.

[fol. 487] IN UNITED STATES CIRCUIT COURT OF APPEALS, TENTH CIRCUIT

ORDER ENLARGING TIME—Filed May 20, 1929

On application of defendant-appellants herein for additional time for docketing the case and filing the record thereof, and for good cause shown:

It is hereby ordered:

That the time for docketing the case and filing the record thereof in the Court of Appeals be enlarged to and including April 11, 1929.

F. E. Kennamer, Judge United States District Court.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER ENLARGING TIME—Filed May 20, 1929

On application of defendant-appellants herein for additional time for docketing the case and filing the record thereof, and for good cause shown:

It is hereby ordered:

That the time for docketing the case and filing the record thereof in the Court of Appeals be enlarged to and including May 11, 1929.

F. E. Kennamer, Judge United States District Court.

March 26th, 1929.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER ENLARGING TIME—Filed May 20, 1929

On application of defendant-appellants herein for additional time for docketing the cause and filing the record thereof, and for good cause shown:

[fol. 488] It is hereby ordered:

That the time for docketing the case and filing the record thereof in the Court of Appeals be enlarged to and including June 11, 1929.

F. E. Kennamer, Judge United States District Court.

May 4th, 1929.

[File endorsement omitted.]

Appearances of counsel omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS

STIPULATION TO INCORPORATE EXHIBIT IN RECORD—Filed Aug. 14, 1929

It is hereby stipulated and agreed by and between the parties to the above entitled cause by their respective counsel,

that the following exhibit be furnished and made a part of the record in this cause on appeal, and that it may be so [fol. 489] considered therewith: Printed copy of British Letters Patent No. 9058 issued to Stephen E. Moss on April 29th, 1896.

Dated July 15th, 1929.

Arthur C. Brown, Counsel for Appellants. W. L. Eagleton, Elton B. Hunt, E. Howard M'Caleb, Counsel for Appellee.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

STIPULATION TO CONTINUE—Filed Sept. 2, 1929

It is hereby stipulated that the Oral Argument set before the Honorable Court in Denver, Colorado, for the 3rd day of September, 1929, may be stricken from the present assignment and reset at the early convenience of the Court.

This Stipulation is entered into for the reason that E. Howard M'Caleb, chief counsel for appellee in this patent case, is seriously ill and cannot be present on the date now set for the hearing, and the appellee is *therefore not* prepared to properly present her argument on that occasion and under the circumstances stated the appellants do not object to having the present assignment of Oral Argument in this cause stricken.

Dated at Tulsa, Oklahoma, August 29th, 1929.

Elton B. Hunt, W. L. Eagleton, Counsel for Appellee. Arthur C. Brown, Counsel for Appellants.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER CONTINUING CAUSE—Sept. 2, 1929

This cause comes on to be heard and thereupon pursuant to written stipulation of counsel for the parties hereto herein filed,

[fol. 490] It is now here ordered that this cause be and the same is hereby continued from the present June Term, 1929, to the October Term, 1929, of this court.

Minute entry of argument and submission November 4, 1929, omitted in printing.

In United States Circuit Court of Appeals, October Term, 1929

No. 112

Before Cotteral, Phillips and McDermott, Circuit Judges

Mr. Arthur C. Brown, for appellants.

Mr. E. Howard M'Caleb (Mr. Elton B. Hunt and Mr. W. L. Eagleton were with him on the brief), for appellee.

Opinion—Jan. 21, 1930

McDermott, Circuit Judge, delivered the opinion of the Court.

The trial court decreed that appellants had infringed three patents of appellee, ordered an accounting, and entered judgment for $20,000 on a bond given to dissolve a temporary injunction. All of the patents relate to devices used in dog-racing.

Patent No. 1,379,224

This patent, and the next one discussed, have been three times in litigation with defendants whose devices were similar to the one here found to infringe. Judge Burns held there was infringement. Smith v. American Electric Rabbit Racing Ass'n, 21 F. (2d) 336. The Court of Appeals of the Fifth Circuit affirmed the decree without opinion. Ibid., 26 F. (2d) 1016. Judge Faris, of the Eastern District of Missouri, on June 15, 1928, followed Judge Burns, without attempt at analysis. Thereafter, and on June 23, 1928, Hon. Smith Hickenlooper, now Circuit Judge, dis-

agreed with Judge Burns, and held there was no infringe- [fol. 491] ment. Smith v. Springdale Amusement Park S. D. Ohio (not yet reported). The two opinions of Judges Burns and Hickenlooper describe the patents and the prior art with such accuracy that any extended statement here would be but repetition.

Patent No. 1,379,224 concerns itself with a mechanical contrivance by which a lure is kept ahead of racing dogs. It is a combination of a race track, adjacent to which is a rail-track, on which runs the conveyor car. Hinged to the car is an arm which extends horizontally over the race track, on which arm is mounted the lure. Underneath the outer end of the arm is a wheel, which supports it, and which runs on the race track. Patent No. 1,507,440 covers a housing for the rail-track, and Patent No. 1,630,812 an improved conveyor car. The car is operated from the judge's stand, or some other fixed point.

The defendants' apparatus, as far as the first patent is concerned, is essentially the same, excepting the arm carrying the lure is rigid, is not hinged to the car, and does not use the wheel; and defendants' casing is on the inner side of the race course, while claim 1 of plaintiff's patent locates the casing around the "outer" side. The contention of defendants is that the patent is but a combination of known elements in an old art, and should be accorded a narrow range of equivalency; that so construed, defendants do not infringe. That a construction broad enough to sustain the degree of infringement, would invalidate the patent by reason of the prior art. The plaintiff concedes that the patent is a combination; that it "combines elements—some new, some old—not found in the prior or any other art." The courts heretofore construing the patent have agreed that it is a combination, which it is. But the plaintiff claims the genius of the invention, the thing that made dog-racing a commercial success, is the horizontal arm; that the hinge and the wheel are but mechanical background, themselves not patentable, a mere matter of selection from any number of suitable accessorial equipments. That the "outer side" means outside the race track proper, and not outside the circular course; and in any event, the designation is an immaterial matter of location.

Mechanical contrivances for carrying a lure in front of racing dogs are not new, as the opinions of Judges Burns

and Hickenlooper show. For example, the patent to Walsh (611,876, Oct. 4, 1898) discloses the race track, the adjacent rail-track, a conveyor car operated from the judge's stand, [fol. 492] and an arm projecting from the car over the race track, carrying the lure. But the arm, in Walsh, is not of one piece; the section attached to the car is inclined vertically to clear the fence, which requires a second section at the end, to be dropped down to the track, to support the sled that carries the lure. Smith does it better. He eliminates one section by the simple device of extending the arm horizontally through a slot running the length of the fence or housing. This fence, or housing, is necessary to keep the dogs away from the car, and to avoid distraction—to keep their minds on the race.

We have no doubt that this is an improvement over the prior art, and for the purpose of this case, assume that it is patentable. Since the defendants use a one-piece horizontal arm running through a continuous slot, there would be infringement, if the plaintiff's claims are broad enough to exclude the world from the use of the horizontal arm. It is academic that the right of a patentee is measured by the claims allowed, and not what might have been allowed. Smith was not allowed a claim covering in terms this single idea of a horizontal arm. He claimed, and was allowed, a combination of various elements. Considering first the question of the rotatable wheel and the hinge: An examination of the file-wrapper discloses that claims 1 and 2 originally applied for were rejected and abandoned. In general terms, they covered any race course suited for dogs, and a mechanical conveyor for the lure. Claim 3, as applied for, covered the combination of race track and rail-track and conveyor car, and "an arm attached to said car extending midway of said course, a wheel rotatably mounted on said arm, and a lure mounted on said arm." Claim 4, as applied for, described the arm as "a horizontally extending arm hinged to said car extending midway of said course, a wheel rotatably mounted near the end of said arm, and resting upon the ground, a platform supported by said arm and a lure or quarry mounted upon said platform for attracting the dogs." Claims 5 and 6 covered other elements not embraced in this patent, and are unimportant save to note that both refer to the horizontal arm resting on a wheel.

In all the claims as applied for, as amended from time to time, and as allowed whenever the projecting arm is claimed, the rotatably mounted wheel supporting it is claimed. The patent office never questioned the patentability of the device of an horizontal arm hinged to the car and resting on a wheel. No amendment was suggested as to the feature. It was allowed, in claim for, on presentation. On the other hand the patent office never passed upon, nor had the opportunity to pass upon, the patentability of the [fol. 493] horizontal arm alone. The precise query, then, is whether the patent excludes the world from the use of an horizontal arm, without the wheel or hinge.

The principles of law are not in dispute. The patentee was not a pioneer in the art. Both Judges Burns and Hickenlooper agree that the patent is a combination of known elements. Judge Burns quoted the general rule governing combinations, from Walker on Patents (5th Ed.) Section 349, as follows:

"Omission of one element or ingredient of a combination covered by any claim of a patent averts any charge of infringement based on that claim, whether or not the omitted ingredient was essential to the combination of the patent, and whether or not it was necessary to the operativeness of the machine."

The same rule, in almost the same language, is laid down by the Eighth Circuit Court of Appeals in Measuregraph Co. v. Grand Rapids Show Case Co., 29 F. (2d) 263. Judge Lewis, in that opinion, has gathered so many authorities on the point that further citation would be superfluous.

This rule, however, must be construed in the light of common sense and fairness, and it is likewise settled that one may not avoid infringement by the mere substitution of a known mechanical equivalent, performing substantially the same function, in substantially the same way, for one of the elements of the combination. The rule was early stated, in Gould v. Rees, 82 U. S. 187, 193:

"Unquestionably the withdrawal of one ingredient in a patented combination and the substitution of another which was well known at the date of the patent as a proper substitute for the one withdrawn, is a mere formal alteration of the combination; and if the ingredient sub-

stituted performs substantially the same function as the one withdrawn, it would be correct to instruct the jury that such a substitution of one ingredient for another would not avoid the charge of infringement."

Where Judge Burns and Judge Hickenlooper disagreed was in the application of these rules to this patent. Judge Burns believes that the defendants' fixed arm without a supporting wheel, was a mere colorable substitution for the patentee's hinged arm and supporting wheel. Judge Hickenlooper thought otherwise. We are not advised as to the evidence before these courts, except that Judge Burns [fol. 494] found from the record before him, that the function performed by the wheel and hinge was merely one of support, which was supplied by the mechanical equivalent of rigidity in the arm. The record before us contains evidence, from plaintiff's witnesses, to the contrary. That evidence discloses that the function of the hinge and wheel is to avoid crystallization of the arm from the vibration of the car; that the hinge and wheel take up the vibration, avoid crystallization and the consequent breaking of the arm. "That is why he went to the wheel and hinge." Defendants' rigid arm serves no such purpose; on the contrary it answers a distinctly different purpose, that of causing the lure to bounce about, more nearly simulating a hare in flight. The patentee was careful, in all his claims and amendments, to describe the arm as resting on the wheel. He considered his idea then as a unit. In fact, the evidence shows that the patentee tried out the rigid arm and considered it was impracticable, and then resorted to the hinge and wheel. Having tried the rigid arm and finding it unworkable; having devised the hinge and wheel to avoid crystallization; having scrupulously claimed the combination of the arm and wheel in every claim and amendment wherein either is mentioned,—is a court justified now in accepting counsel's ipse dixit that the "arm's the thing" and the hinge and wheel but sketchy background, which we should disregard? The question is undoubtedly a close one, but considering that the art of mechanical dog-racing is not new, that the patentee was not a pioneer in the field, and the substantial functions performed by the wheel and hinge not served by the rigid arm, we are of the opinion that the law laid down in I. T. S. Co. v. Essex Co., 272 U. S.

429, 444, is applicable, that "if the claim to a combination be restricted to specified elements, all must be regarded as material."

The second point of defendants is that infringement is avoided because their casing is on the inner side of the course while claim 1 of plaintiff's patent locates it "around the outer side of the race course." It is argued that claim 3, as applied for, was rejected, and later allowed when the location was limited by amendment to the "outer side." It is undoubtedly the rule that a decision by the patent office is an adjudication. If the applicant disagrees with the decision, he must appeal or forever after hold his peace. I. T. S. Co. v. Essex Rubber Co., 272 U. S. 429; Weber Elec. Co. v. Freeman Elec. Co., 256 U. S. 668; Hubbell v. United States, 179 U. S. 77; Shepard v. Carrigan, 116 U. S. 593; Key Boiler Equipment Co. v. Coleman (1 C. C. A.), decided December 4, 1929, and not yet reported. But the patent office made no decision on the question of location of [fol. 495] the casing. Claim 4, as applied for, was allowed without quibble, and that claim is not limited to the "outer side" of the race course. On the contrary, the language is broad, "adjacent said course on one side." Moreover the patent office gave as its reason for rejection of claim 3, that "Moss is provided with a housing and it would not be invention to provide Walsh with one." The matter of location was not adjudicated, and the cited cases do not apply. The further point that the matter of location is a substantial change in the combination is a question of fact. The evidence is sufficient to support the finding that the change in location of the casing is colorable and not substantial.

The bill should be dismissed as to Patent No. 1,379,224.

Patent No. 1,507,440

This patent deals with the housing for the conveyor car and the rail-track. Claim 1 covers a combination in such housing of (a) posts set in the ground; (b) timbers attached to form a frame; (c) boards attached to timbers to form continuous enclosure; (d) having a continuous opening in one side; (e) truss rods attached to the closed side, to support the housing above the opening. Claim 2 covers the same structure, with "upper timbers being inclined

upwardly, adjustable stay rods connecting the upper ends of the posts to support the inner side wall of the frame." Claim 3 describes the stay rods as "screw-threaded adjustable stay rods."

In other words, a wooden housing with truss rod support, a slot in it, and adjustable stay rods to take up the spread. The defendants housed their track with wood, but did not use the truss or adjustable stay rods.

While the validity of plaintiff's patent is not specifically in issue, this court would not be warranted in affirming a decree predicated on a device clearly not patentable. The Supreme Court has held that even if the question of patentability is ignored by the parties "neither the Circuit Court nor this court can overlook the question of patentability." Hill v. Wooster, 132 U. S. 693,698. To drive posts into the ground and nail boards thereon, and roof it, is no indication of inventive genius. An idea that would naturally occur to a skilled mechanic acquainted with the business, in the ordinary processes of manufacture or construction, is not patentable. Dunbar v. Myers, 94 U. S. 187; Reckendorfer v. Faber, 92 U. S. 347; Thompson v. Boisselier, 114 U. S. 1; Atlantic Works v. Brady, 107 U. S. 192; Railroad Supply Co. v. Elyria Iron Co., 244 U. S. 285. [fol. 496] In addition, the housing patented has a continuous slot in it. But in 1903, Bertram (No. 729,120) disclosed a precisely similar method of continuous contact with a track outside the housing. His specification describes a housing for a third electric rail "in which is formed a longitudinal slot or opening."

Patentability of this device, if it exists at all, must depend upon the truss rod support or the adjustable stay rods, neither of which defendants use. Defendants' housing is but a box, with a slot next the roof on one side; the roof is supported by a cleat nailed between the closed side and the timbers of the roof extended, which plaintiff calls a "truss"; perhaps it is, but plaintiff has no monopoly on "trusses" as such, and the defendants' cleat is at best no more than generically kin to plaintiff's rod. If there is patentability disclosed herein, it must arise from the specific structure; the defendants' housing does not, in our opinion, fall within its necessarily narrow range of equivaleney. Accordingly there is no infringement.

The bill should be dismissed as to Patent No. 1,507,440.

Patent No. 1,630,812

This patent covers the conveyor car. Claims 1 and 2 are set out in the margin.* Claim 3 further amplifies the element of guides and bolts by describing them as "guides on said cross bar and extending upwardly and outward to engage the side frame, thereby holding the cross bar in horizontal position, bolts passing transversely through the cross bar on both sides of the pivotal connection between the cross bar and cross member."

Four wheels mounted on two axles, the front axle being pivoted on a king-bolt, and the frame supporting motive [fol. 497] power, are not novel in themselves. Buggies, automobiles and hand-cars contain these. This conveyor car, designed for high speed on a short circular track, without human guidance, must be so constructed as to quickly bring the front axle back to alignment after it has made the curve; hence the springs. And it must be so constructed as to resist the centrifugal force which would throw the

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*1. In a traction car of the class described, the combination with a frame, of a motive power mounted upon said frame, traction wheels mounted upon an axle rotating in bearings rigidly attached to said frame, wheels mounted upon a second axle rotating in bearings mounted upon a support adapted to rotate pivotally about its mid-center, guides on said support and engaging the frame to hold said support in horizontal position and springs connected between said support and the frame adapted to hold said wheels normally in alignment with the aforementioned wheels.

2. In a device of the class described, the combination with a motor driven car, of an axle rotatably mounted in bearings rigidly attached to said car, wheels fixedly mounted upon said axle, a second axle rotatably mounted in bearings attached to a cross-bar pivoted at its mid-center to the frame and adapted to turn to right or left, bolts extending through said cross bar and being provided with adjusting means and springs connected from said bolts to the frame on either side of its center adapted to hold said cross bar normally at right angles to the direction of travel of the car.

cross bar off of horizontal, on the curves, if not restrained; hence the guides. The car, found to infringe, has four flanged wheels, two axles, the front pivoted on a king-bolt; springs are used to bring the front wheels back to alignment, and guides are used to resist the centrifugal force.

The difference between the parties is again a matter of the interpretation to be given this patent. The burden is upon plaintiff to show infringement, and the evidence is not satisfactory; but on the whole it seems clear as the master said in his opinion, that the defendants do not use the bolts to connect the springs, nor do they have means of adjustment; and the guides on defendants' car are on the frame and engage the support, and not the converse, as in plaintiff's. The question then is, whether in view of the prior art, the patentee is limited to his specific structure, within narrow limits, or whether he should be accorded a broad range of equivalents. The controversy centers around the springs and the guides.

First, as to the springs: Without any attempt to exhaust the prior art, it is sufficient to say that as far back as 1867 in the patent of Fairfax (No. 60,868) a patent was granted for railroad cars, the principal object of which was to enable the car to turn curves easily. It disclosed a pivoted axle and "behind the truck are placed half elliptic springs which bear against the rear ends of the pedestal and bring them even and square with the car after turning a curve. Instead of elliptic, spiral springs may be employed." And in 1881 in the patent of Robinson (No. 243,796) spiral springs are disclosed "to assist the trucks into their normal position." And in 1895 the patent of Allen (No. 532,937) discloses springs to assist in bringing the wheels back to normal position, and adjustable bolts to regulate tension of the spring. The master in his opinion, states that claim 1 of the patent is for springs used for this purpose, without limitation as to specific construction. The claim, if so interpreted, is clearly anticipated by the above references. Moreover, after rejection, and in support of amended claims detailing a specific structure, the applicant advised the patent office, that—

[fol. 498] "The claims in this case have been reduced in number and claim 1 has been amended to bring out the fact that the support is provided with guide members which

engage the frame and hold the support in horizontal position. There does not appear to be any such structure in any of the references cited by the examiner, and it is believed that this limitation places this claim in condition for allowance.

"Claim 2 has been amended to bring out the specific structure of the means to which the springs are secured and calls for bolts extending through the cross bar and having adjusting means thereon. This is a specific manner of providing securing means for the springs and the adjustment of the springs is absolutely essential for the proper functioning of the device.

"The new claim 3 very distinctly and minutely points out applicant's construction and includes both the guide members, the bolts to which the springs are attached and the fact that one of the cross members carries the cross bar on which the pivotal axle is mounted, and the second cross members carries the propelling means. This is a very specific construction and it is believed that the examiner would be clearly justified in passing this case to issue."

We conclude, as to the springs, that the patentee is limited to the structure claimed, and the departure in defendants' care is sufficient to avoid infringement.

As to the guides: The patent to Barrow (1,412,383, April 11, 1922) discloses "retaining blocks" secured to the under sides of the frame, the purpose of which is the same as the "guides" in the patent. The master does not refer to the guides in his opinion, and does not find infringement on account of the guides. His finding is:

"That by reason of the new and novel features of Patent No. 1,630,812, as pointed out, Smith is entitled to a range of equivalents commensurate to the scope of his invention; and that construed in this light the traction car in use by the defendant Magic City Kennel Club, by reason of the use of the springs called for in the Smith Patent and the equivalent means of fastening same to the car, and the use of the horizontally extending lure-carrying arm, and the use of the pivoted front axle arrangement in connection therewith, infringes the claims of this patent."

[fol. 499] Opposing centrifugal force by the device of retaining blocks or guides does not require any high degree of inventive genius; in view of the prior art, and the failure of the master to find infringment from the unsatisfactory evidence, we cannot find infringement because of the guides.

We disagree with the master in according the patent a broad range of equivalents, and in finding novelty in the king-bolt for the front axle. The use of the horizontal arm is not a part of this structure. Without detailing it, the history of this patent in the patent office discloses an intent, on the part of that office, to confine the patent to the specific structure.

The bill should, therefore, be dismissed as to patent No. 1,630,812.

The Bond of $20,000

Appellants further assign error on account of the allowance of a temporary injunction on September 24, 1927, which was after the decision of Judge Burns and before the decision of Judge Hickenlooper; and particularly that the injunction order provided for its dissolution only by the giving of a bond in the sum of $20,000 stipulated damages. The final decree awarded plaintiff judgment not only for all the profits derived from the infringment, but in addition for $20,000, the penalty of the bond. Both Judges Hickenlooper and Faris commented upon the unsavory reputation of the so-called sport of dog-racing, and the questionable gambling that is generally attributable to it. Naturally neither party raises the question. Since the case has been disposed of on other points, the question presented need not be noticed further than to say that the machinery of the courts must not be used, directly or indirectly, to require one party to account to another for profits derived from a violation of any law. The decree awarding judgment for all legitimate profits would compensate plaintiff for the wrong done if there had been an infringement; an added $20,000 could only serve as a subterfuge for a judgment for gambling profits or concessions.

The decree is reversed with directions to dissolve the injunction, discharge the bond, and dismiss the bill.

[fol. 500] In United States Circuit Court of Appeals

Decree—Jan. 25, 1930

Before Honorable Robert E. Lewis, Senior Circuit Judge, and Honorable T. Blake Kennedy, District Judge

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Oklahoma, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said District Court, in this cause, be and the same is hereby reversed, that this cause be and the same is hereby remanded to the said District Court with directions to dissolve the injunction, discharge the bond and dismiss the bill; and that Magic City Kennel Club, Inc., and John B. Shaughnessy, appellants, have and recover against Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, deceased, appellee, their costs herein.

[fols. 501-514] Petition for rehearing, covering 13 pages, omitted from this print. It was denied and nothing more by order March 18, 1930.

[fol. 515] In United States Circuit Court of Appeals

Motion of Hannah M. Smith for an Order Staying the Mandate

Filed Mar. 18, 1930

To the Honorable United States Circuit Court of Appeals for the Tenth Circuit

Your petitioner Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, Presents this her application for an order staying the issuance of the mandate of this Honorable Court under the provisions of Section 8 (d) of the Act of Congress of February 13, 1925 (U. S. Code Title 28, Sec. 350), and in [in] support thereof presents the following reasons for allowance of the order.

Your petitioner desires a review of the final decree of this Court reversing the judgment of the District Court and will timely apply for certiorari to the Supreme Court of the United States to review said decree. Petitioner further represents that the issuance of said mandate, pending said application and until the action of the Supreme Court of the United States thereon will cause petitioner injury in excess of Twenty thousand dollars and costs, and the manufacture, sale and use of her patented devices by all persons, whereas the stay of said mandate will not cause the appellants injury other than its costs incurred, and furthermore appellants will be protected by bond as the Court may see fit to fix as a condition of the stay.

Respectfully submitted

E. Howard McCaleb, Attorney for Appellee

[File endorsement omitted.]

In United States Circuit Court of Appeals

Order Denying Rehearing and Granting Stay of Mandate

May 18, 1936

This cause came on to be heard on the petition of appellee for a rehearing herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that the said petition be and the same is hereby denied.

This cause then came on to be heard on the motion of appellee for a stay of the mandate herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that the mandate of this court in the herein for a period of thirty days from this day, and that, if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, with proof of service thereof under Section 3 of Rule 38 of the Supreme Court, the stay

FILE COPY

APR 11 1930

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. [redacted] 77

HANNAH M. SMITH, Administratrix of Estate of Owen P. Smith, Deceased,

Petitioner,

versus

MAGIC CITY KENNEL CLUB, INC., and JOHN J. SHAUGHNESSY.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

E. HOWARD M'CALEB,
Counsel for Petitioner.

MONTGOMERY-ANDREE PRINTING CO. INC., 430-432 CHARTRES, N. O.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. _____

HANNAH M. SMITH, Administratrix of Estate of Owen P. Smith, Deceased,

Petitioner,

versus

MAGIC CITY KENNEL CLUB, INC., and JOHN J. SHAUGHNESSY.

PETITION FOR WRIT OF CERTIORARI.

May It Please the Court:

The petition of Hannah M. Smith, Administratrix of the Estate of Owen P. Smith, deceased, respectfully shows to this Honorable Court:

—A—

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is an equity suit for infringement of petitioner's five patents relating to devices used in dog racing amusement (R. pp. 2 to 13). As the reasons for allowing

the writ of certiorari are concerned with infringement of Patent No. 1,379,224, claims 1 and 2 (R. pp. 11, 12, to 165), and Patent No. 1,507,140, Claims 1, 2 (R. pp. 11, 108, 109), we omit reference to those parties defendant other than respondents who were dismissed (R. pp. 92, 108), to two patents withdrawn (R. p. 74) and to Patent No. 1,630,812 (R. pp. 6, 11) determined adversely to petitioner (R. pp. 106 to 109).

Temporary injunction was granted but withheld upon respondents furnishing $20,000.00 bond for anticipated damages in case it should be finally decided that respondents have infringed any one of the claims (R. pp. 40, 41) which bond was filed (R. p. 41). Respondents answered, denying validity of the Patents and their infringement of the claims (R. pp. 47 to 70). Special Master was appointed to hear and determine the issues and report thereon (R. p. 71). At the hearing before the Master, the patents were assumed valid, treated as such by the parties and the Master (R. p. 78), the real issue being that of infringement of the claims (R. p. 78), and after taking testimony (R. pp. 109 to 155) the Master filed his report finding infringement (R. pp. 73 to 93). Respondents excepted to the Master's Report solely on the issue of infringement (R. pp. 94 to 105). The exceptions were overruled and an appropriate decree approving the Master's Report and adjudging infringement duly entered (R. pp. 106, 107, 108, 93), from which decree respondents appealed to the Circuit Court of Appeals for the Eighth Circuit (subsequently transferred to the Tenth Circuit under Act Cong. Feb-

(a) Summary as to Patent No. 1,379,224, Claims 1 and 2.

and that the arm is hinged to the conveyor car and supported at its outer end by a wheel 26 rotatably mounted (R. p. 164, lines 9 to 17). The essential facts are not in dispute; comparison of the two claims with respondent's device (R. pp. 177, 465, 467, 32, 33, 35, 36, 79, 80, 91, 110, 111, 112, 115, 116) shows an appropriation of the claims excepting respondent's lure carrying arm is pivoted to the car or rigidly supported in lieu of the hinge and wheel support described and claimed.

(b) Summary as to Patent No. 1,507,440, Claim No. 1.—In a housing for covering tracks and cars having laterally extending arm operated on said track, the combination of (a) posts set in the ground at the sides of said track, (b) timbers attached to said posts to form a frame, (c) boards attached to said timbers and posts to form a continuous enclosure above said track, and having a continuous opening in one side of said housing adapted to permit extension of the laterally extending arm therethrough; (d) and truss rods attached to the closed side of the housing adapted to support the side of said housing above the said continuous opening. (R. p. 169, lines 97 to 110). In his specifications, the patentee says, that the invention is not restricted to the exact details of construction (R. p. 169, lines 24 to 34); and Claims 2 and 3 provided adjustable stay rods and adjustable screw threaded stay rods (R. pp. 169, 170) instead of the truss rods of Claim No. 1. The essential facts are not in dispute; comparison of the Claim No. 1 with respondent's housing device (R. pp. 177, 179, 33, 35, 37, 83, 84, 110, 112, 117), shows a literal translation of Claim No. 1.

Short statement of matter involved.—As to Patent No. 1, 1,379,224, Claims 1 and 2, the matter involved is whether or not respondents' rigid support of the horizontal lure carrying arm is the equivalent of the movable support of that arm as described and claimed in the Patent.

And further, the question is (1) whether this patent is of primary character, or if not whether it has substantially advanced the art, entitling the patentee (petitioner), in either case, to a range of equivalents commensurate with its scope; (2) whether these claims are restricted to a movable (hinge and wheel) support of the horizontal lure carrying arm; (3) whether infringement is avoided by the (respondents') substitution of a rigid for the movable support of said arm; (4) whether the essence of the invention is the horizontal-lure-carrying arm projecting through a continuous longitudinal opening of the casing; (5) whether infringement is avoided by Respondents' substitution of a rigid for said movable support of the arm and pertaining to environment of the inventive step; (6) whether the patentee is deprived of equivalents of such accessorial element of support of the arm described and claimed in his preferred form, there being no limitation imposed by the prior art and no disclaimer of equivalents; (7) whether Respondents have infringed the claims.

As to Patent No. 1,507,440 and the claims thereof, particularly Claim No. 1, the matter involved and the question is whether respondents' copy of the Claim avoids infringement by ascribing to it or its elements a nomenclature different from the patentee's glossary in structural engineering with no difference in function, operation and result.

As to the discharge of the stipulated damage bond, the matter involved and the question is whether or not, on a decree of infringement of any one of the claims stipulated, the bond is void on the Court's own suggestion or motion, admittedly without evidence to support it, that such bond is a subterfuge for the payment of alleged illegal profits to be derived by respondents from their use of the infringing device.

—B—

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

(1) As to Patent No. 1,379,224, Claims 1 and 2. The decision of the Tenth Circuit Court of Appeals denying infringement is in conflict with the decison of the Fifth Circuit Court of Appeals on the same matter *(Rule 38, Sec. 5 [b])*. See *American Electric Rabbit Racing Association, et al., v. Smith, 26 Fed. (2nd Series), 1016,* wherein this patent and the infringing device described in the opinion of the District Court, in *Smith v. American Electric Rabbit Racing Association, et al., 21 Fed. (2nd Series), 366,* are referred to and the "conclusions" of the District Court were agreed to by the Fifth Circuit Court of Appeals in its decision. The main conclusion of the opinion in *Smith v. American Electric Rabbit, etc., et al., 21 Fed (2nd) 366,* so agreed to by the Fifth Circuit Court of Appeals, in *American Electric Rabbit, etc., et al., v. Smith, 26 Fed. (2nd), 1016,* is, that the substantial functions performed by the wheel and hinge are served by the rigid arm, in consequence of which equivalency obtains and infringement not avoided. In the decision of the Tenth

Circuit Court of Appeals that conclusion is to the contrary (R. p. 494).

In each case the validity of this patent is assumed by the parties and by the Courts, the conflict in each decision being as to the scope and infringement of the claims. The infringing device described in the Fifth Circut Court of Appeals decision and the infringing device described in this case are substantially identical, so that extrinsic evidence is not needed to apply in either of them to the patent specifications and claims, as from a mere comparison of the patented device and the infringing device in each case, the conflict of decision is manifest.

(2) As to Patent No. 1,507,440, the decision of the Tenth Circuit Court of Appeals denying infringement is in conflict with the decision of the Fifth Circuit Court of Appeals on the same matter. *(Rule 38, Sec. 5 [b]).* The conclusions of the opinion in *Smith v. American, etc., 21 Fed. (2nd), 266, supra,* incorporated in the decision of the Fifth Circuit Court of Appeals in *American Electric Rabbit Racing Association, etc., v. Smith, 26 Fed. (2nd), 1016, supra,* are substantially to the effect that defendants in that case have infringed, and the infringing housings described in each case are substantially identical as from a mere comparison with Claim No. 1 of the Patent and the infringing device described in both cases. Neither Court of Appeals held this patent invalid. *(Smith v. American, etc., 21 Fed. [2nd] 366, 372, et seq).* (R. pp. 495, 496). Its validity was assumed in the Fifth Circuit case, and the Tenth Circuit Court of Appeals predicates its decision of non-infringement on the scope of the claims and on the hypothesis of patentability. (R. p. 496).

(3) As to the discharge of the stipulated damage bond, the decision of the Tenth Circuit Court of Appeals on a suggestion confessedly without any evidence in the record to sustain it, that the bond is a subterfuge for the payment of illegal profits to be derived by respondents from the use of the infringing device, is a departure from the accepted and usual course of judicial proceedings so as to call for an exercise of this Court's power of supervision under Rule 38, Sec. 5 (b), of the Rules of this Court.

WHEREFORE, your petitioner respectfully prays that a writ of *certiorari* be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for Tenth Circuit, commanding that cou to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 112, *Magic City Kennel Club, Inc., and John J. Shaughnessy, Appellants, v. Hannah M. Smith, Administratrix of Estate of Owen P. Smith, Deceasel, Appellee*, and that the said decree and judgment of the United States Circuit Court of Appeals for the Tenth Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will every pray.

HANNAH M. SMITH, ADMINISTRATRIX OF ESTATE OF OWEN P. SMITH, DECEASED.

By E. HOWARD M'CALEB,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. _____

HANNAH M. SMITH, Administratrix of Estate of Owen P. Smith, Deceased,

Petitioner,

versus

MAGIC CITY KENNEL CLUB, INC., and JOHN J. SHAUGHNESSY.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinions of the Courts Below.

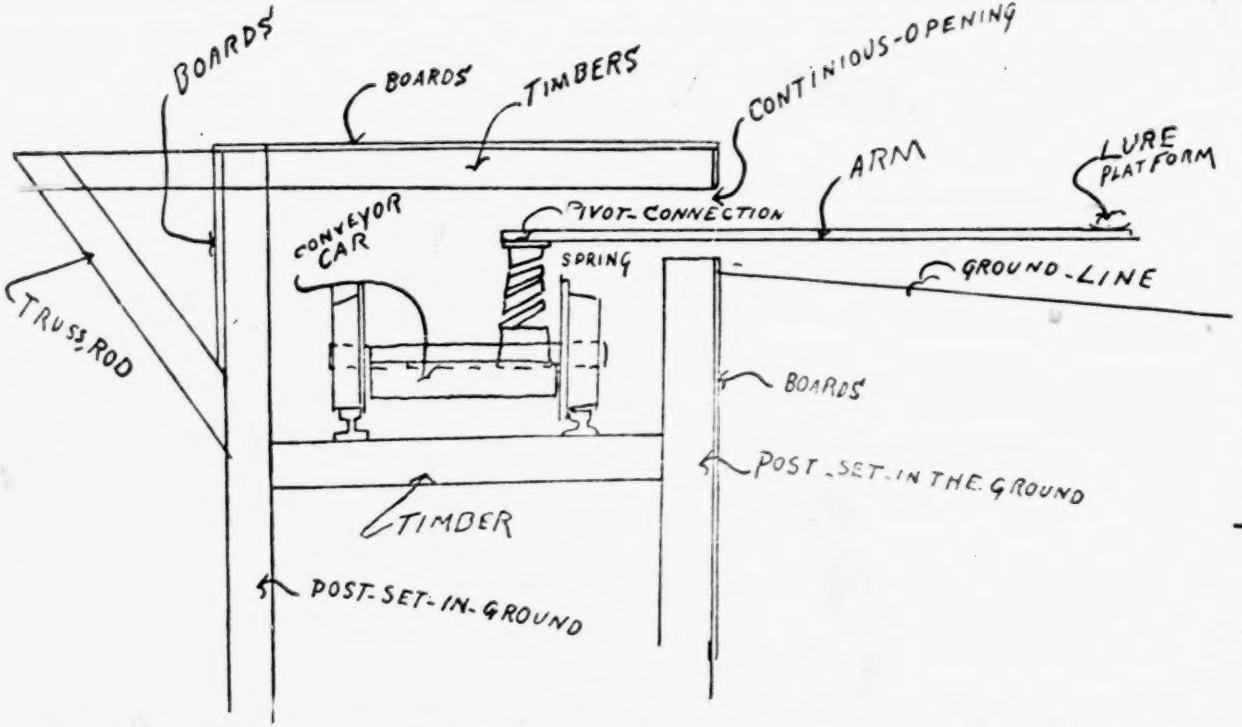
(a) No written opinion of the District Court, save the Master's report, R. p. 73, *et seq.)* confirmed by the decree (R. p. 106); (b) Opinion of U. S. Circuit Court of Appeals, Tenth Circuit in *Magic City Kennel Club and John J. Shaughnessy, Appellants, v. Hannah M. Smith, Administratrix, etc.*, No. 112 of the docket of said Court

is dated January 21st, 1930, not yet reported, and copied in R. pp. 490 to 499.

II.

Jurisdiction.

(a) Statutory provision believed to sustain the jurisdiction is Judicial Code Sec. 240 (a) as amended by Act. Cong. Feb. 13, 1925, Chap. 229, 43 Stat. 936; (b) date of decree sought to be reviewed is January 25, 1930 (R. p. 500), rehearing denied March 18th, 1930, (R. p. 515); date of filing petition for *certiorari*, see filing date stamped by Clerk of this Court on cover of petition for *certirorari;* (c) nature of case is an equity suit for infringement of Claims 1 and 2 of Patent No. 1,379,224, (R. pp. 2 to 13, R. p. 158), Claims 1, 2, 3 of Patent 1,507,440 (R. pp. 2 to 13; R. p. 169) and the validity of a $20,000.00 bond for stipulated damages given by respondents in lieu of a preliminary injunction (R. pp. 41, 43); (d) Rulings below: The District Court found and adjudged infringement of said claims, granted a permanent injunction and entered judgment for the amount of said bond in accordance with its terms (R. p. 106). On appeal therefrom, the Tenth Circuit Court of Appeals ruled that these claims were not infringed (R. pp. 490 to 499), dismissed the suit, dissolved the permanent injunction and discharged the bond (R. p. 500); (e) Cases believed to sustain the jurisdiction. *Mangum Import. Co. v. Coty 262 U. S. 159, 162, 163. Sanitary Ref. Co. v. Winters 280 U. S. p. 1, (74 L. Ed. Advance Opinions, U. S. Sup. Court Pamphlet No. 1, p. 1).*



Plaintiff's Exhibit No. 5. (R. p. 177)

(Note)—The words "posts set in ground, boards, timbers, truss rod and continuous opening" exhibit the construction of the casing or housing provided with a continuous opening; the words "pivot connection" exhibits rigid support of the horizontal-lure-carrying arm; the word "arm" exhibits the arm projecting from the conveyor and through the longitudinal opening of the casing over the ground line (track) and the words "lure platform" exhibits the platform of Claim 2.

Claim No. 1—In a dog racing amusement (1) a race course suited for dogs (2) a casing extending around the outer side of the race course and provided with a longitudinal opening (3) a mechanical conveyor including a track extending around the race course and located within the casing (4) and a conveyor car mechanically operated upon said track and provided with an arm extending through the longitudinal opening of the casing in a projecting position over the track and adapted to carry a lure (5) and a wheel rotably mounted on and supporting the arm at the p.ojecting end thereof.

Claim No. 2—In an amusement, the combination (1) a race course suited for dogs (2) a covered rail track adjacent said course on one side (3) a conveyor car mechanically operated upon said track (4) a horizontally extending arm hinged to said car extending midway of said course (5) a wheel rotably mounted near the end of said arm and resting upon the ground (6) a platform supported by said arm (7) and a lure or quarry mounted [illegible] for attracting the dogs

III.

Statement of the Case.

A statement of the case has been given under heading A of the petition for *certiorari* and in the interest of brevity need not be repeated.

For convenience, a cross-section view of respondents' apparatus is illustrated on the accompanying fly sheet (see opposite page) (See also R. p. 177; also R. pp. 158 to 165, claims 1 and 2, R. p. 165, lines 34 to 60; see also R. pp. 32, 33, 35, 36; Master's Report R. pp. 79, 80, 91; also R. pp. 110, 111, 112, 115, 116, 465, 467, 469). It substantially corresponds with the description of the infringing apparatus in *American Electric Rabbit, etc., v. Smith 26 Fed. (2nd), 1016*, and *Smith v. American Electric Rabbit, etc., 21 Fed. (2nd), 366*, (See also transcript of record same case, *sub. nom. Heintz and American Rabbit, etc., v. Smith, 278 U. S. 646*, No. 449, Oct. Term 1928, U. S. Supreme Court on petition for *certiorari* pp. 54, 80, 81, 82, 103, 143).

IV.

Specification of Errors.

The Tenth Circuit Court of Appeals erred in finding and holding:

(1) That Patent No. 1,379,224 Claims 1 and 2 are not infringed by respondents.

(2) That Patent No. 1,507,440 and either of the claims are not infringed by respondents.

(3) That the stipulated damage bond is void.

V.

Argument.

Summary of Argument.—(1) As to Patent No. 1,379,224, Claims 1 and 2. Considering that respondents' apparatus and the apparatus described in *American etc., v. Smith 26 Fed. (2nd), 1016)*, and *Smith v. American, etc., 21 Fed. (2nd), 366*, are substantially identical and in each apparatus the respondents in this case and the defendants in the Fifth Circuit Court of Appeals case substitute a rigid for the movable support of the arm described and claimed in the Patent, it is urged that:

Point A. The decision below is contrary to and in conflict with the prior decision of the Fifth Circuit Court of Appeals on the same matter.

(2) As to Patent No. 1,507,440, particularly Claim No. 1, considering that the invalidity of this patent was left undecided and its validity assumed in both cases and that respondents' housing is substantially identical with the housing described in the Fifth Circuit Court of Appeals case, it is urged that:

Point B. The decision below denying infringement is contrary to and in conflict with the prior decision of the Fifth Circuit Court of Appeals on the same matter.

(3) As to the discharge of the stipulated damage bond, considering that on a decree adjudging infringement the order and this bond given thereunder is limited to the payment of petitioner's damages only and not to respondents' profits, whether or not illegally derived by respondents, it results that

Point C. The decision of the Court below is a departure from the usual and accepted course of judicial proceedings.

Point A.

The decision below is contrary to and in conflict with the prior decision of the Fifth Circuit Court of Appeals on the same matter.

Conclusions of the Fifth Circuit Court of Appeals in *American Electric Rabbit, etc., v. Smith, 26 Fed. (2nd), 1016,* in agreement with *Smith v. American Electric Rabbit, etc., 21 Fed. (2nd), 366,* are as follows: (1) By this Patent, (No. 1,379,224) Smith, patentee, has substantially advanced the art entitling the patent and its claims to a liberal construction and to a range of equivalents commensurate with the scope of his invention *(Smith v. American Electric Robbit, etc. 21 Fed. (2nd), 366, at page 371);* (2) the essence of the invention described and claimed in Claims 1 and 2 is the horizontal-lure-carrying arm projecting over the race course through the longitudinal opening of the Conveyor housing *(Ibid, 21 Fed. (2nd) 366, at pages 368, 371, 372);* (3) the form of movable or wheel support of the hinge-mounted horizontal arm is not of the essence of the invention, that no limitation was imposed by the prior art and no disclaimer of equivalents therefor *(Ibid, 21 Fed. (2nd) 366, at pages 370, 371);* (4) that the arm rigidly connected to the conveyor car is the obvious equivalent of the hinged arm supported by a wheel, constituting a formal alteration and a deliberate evasion of the claims *(Ibid, 21 Fed. (2nd), 366, at pages 371, 372);* (5) defendants have thereby infringed.

Any one and more of these conclusions are controverted by the decision of the Court below, for the question decided in each case is whether the rigidly supported arm is the equivalent of the movably supported arm. Comparison between the structure described and claimed in the patent and the structure described in the Fifth Circuit Court of Appeals decision and in this case, evidences such an identity as to resolve the question in each case into one of law, the correct application of the rule of equivalency and which of the two decisions is correct. *Sanitary Refrigerating Co. v. Winters 280 U. S. (74 L. Ed. Advance Opinions U. S. Sup. Court Pamphlet No. 1, pp. 1, 4).*

Point B.

The decision below denying infringement of Patent 1,507,440 and the claims thereof, is contrary to and in conflict with the prior decision of the Fifth Circuit Court of Appeals on the same matter.

It is believed that the description of respondents' housing structure in the opinion below is incomplete and indefinite, so that, in the interest of clarity, reference should be made to the undisputed description of record (See R. pp. 177, 33, 35, 37, 83, 84, 110, 112, 117; also cross section view of housing on fly sheet, opposite page 11 of this brief). Enough is shown by the opinion that the member which the Court below designated as a "cleat" is the same member which the Fifth Circuit Court designates as a knee brace or truss rod, and the same member which the patentee designates in Claim No. 1 as a truss rod—At all events, these dissertations in nomenclature resulted in

the Fifth Circuit Court of Appeals in *26 Fed. (2nd)* in agreement with the conclusions of *21 Fed. (2nd), 366,* holding infringement and the Court below holding non-infringement. But aside from judging about similarities and differences by the names of things rather than by the office or function which they perform, and in view of the structure in each case reading directly on Claim No. 1, the conflict of decision is so manifest as to preclude further demonstration of the obvious. *Sanitary Ref. Co. v. Winters, 280 U. S. supra.*

Point C.

The decision below, as to discharge of the stipulated damage bond, is a departure from the usual and accepted course of judicial proceedings.

This point comes into play on a finding of infringement of any one of the claims as stipulated in the bond for petitioner's damages. Of course, on a dismissal of the bill for non-infringement, the remarks made in the opinion below become *dicta.* But on a finding of infringement, these remarks, confessedly without any evidence in support, relate to respondents' profits and not to the subject matter of the bond or to petitioner's damages, and therefore the discharge of the bond is arbitrary.

CONCLUSION.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that a conflict of decision between the Fifth and Tenth Circuit Courts of Appeal on the same

matter may be removed, and that a departure from the usual and accepted course of judicial proceedings may be obviated, and that to such an end a writ of *certiorari* should be granted and this Court should review the decision of the United States Circuit Court of Appeals for the Tenth Circuit and finally reverse it.

Respectfully submitted,

E. HOWARD M'CALEB,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930.

No. 77

HANNAH [redacted] SMITH, Administratrix of ESTATE OF OWEN P. SMITH, Deceased,

Petitioner,

versus

MAGIC CITY KENNEL CLUB, INC., and JOHN J. SHAUGHNESSY.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

BRIEF ON BEHALF OF PETITIONER.

E. HOWARD M'CALEB,
Counsel for Petitioner.

MONTGOMERY-ANDREE PRINTING CO. INC., 430-432 CHARTRES, N. O.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930.

No. 77

HANNAH M. SMITH, Administratrix of ESTATE OF OWEN P. SMITH, Deceased,

Petitioner,

versus

MAGIC CITY KENNEL CLUB, INC., and JOHN J. SHAUGHNESSY.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

BRIEF ON BEHALF OF PETITIONER.

Opinions of the Courts Below.

(a) No written opinion of the District Court, save the Master's Report (R. p. 79 *et seq.*) confirmed by decree (R. p. 116); (b) Tenth Circuit Court of Appeals in *Magic City Kennel Club, Inc., et al., v. Smith*, 38 Fed. (2nd) 170, (also R. p. 405); (c) Fifth Circuit Court of Appeals in *American Electric Rabbit, etc., v. Smith*, 26 Fed. (2nd) 1016, agreeing with conclusions in *Smith v. American Electric Rabbit, etc.*, 21 Fed. (2nd) 366.

Jurisdiction.

See petition and brief on application for writ of certiorari in this case, No. 809, October Term, 1929.

Statement of the Case.

This is an equity suit, limited on certiorari (R. p. 418) to infringement by Respondents (R. p. 1 to 13, 98, 99, 100, 101, 116) of petitioner's patents No. 1,379,224, claims 1 and 2 (R. p. 1 to 13, 83, 116, 171 to 177) and No. 1,507,440 (R. p. 1 to 13, 83, 116, 178 to 186) relating to devices used for dog-racing in pursuit of a mechanical lure.

Temporary injunction was granted but withheld upon respondent's furnishing $20,000.00 bond for stipulated damages in case it should be finally decided that respondents have infringed any one of the claims (R. pp. 44, 45); which bond was filed (R. pp. 46, 47, 48, 49). Respondents answered denying validity of the patents and their infringement of the claims (R. pp. 51, 59 to 76). Special Master was appointed to hear and determine the issues and report thereon (R. p. 77). At the hearing before the Master, the patents were assumed valid, treated as such by the parties and the Master (R. pp. 83, 84), the real issue being that of infringement of the claims (R. p. 84); and after taking testimony (R. p. 119 to 170) the Master filed his report finding infringement (R. p. 79 to 101). Respondents excepted to the Master's Report solely on the issue of infringement (R. p. 101 to 115). The exceptions were overruled and an appropriate decree approving the Master's Report and adjudging infringement and ordering payment of liquidated damages stipulated

(R. p. 116 to 118) from which decree respondents appealed (R. p. 387).

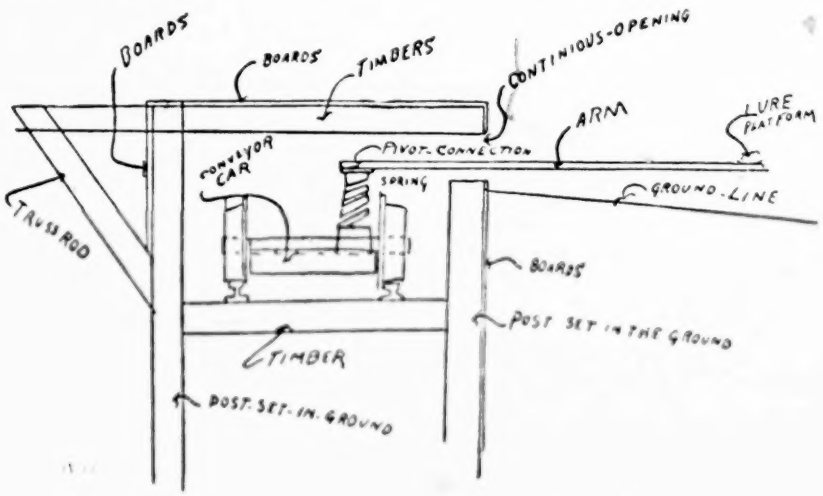
In reversing the decree, dismissing the bill and discharging the stipulated damage bond (R. p. 405 to 416) the Tenth Circuit Court of Appeals assumed that Patent No. 1,379,224, claims 1 and 2, were valid but not infringed (R. p. 405 to 410); and that if Patent No. 1,507,440 is valid, none of its claims are infringed (R. pp. 410, 411).

Summary as to Patent No. 1,379,224, Claims 1 and 2.—In his specifications, patentee Smith states that the invention consists of the arrangement and combination of parts described and claimed, and while the invention is not restricted to the exact details of construction disclosed, yet for the purpose of illustrating a particular embodiment thereof reference is had to the accompanying drawings (R. pp. 171, 172); and in the arrangement of the lure-carrying arm, that it is hinged to the conveyor car and supported at its outer end by a rotatably mounted wheel (R. pp. 173, 174). Claims 1 and 2 substantially describes the invention.

Claim 1. "In a dog racing amusement (1) a race course suited for dogs; (2) a casing extending around the outer side of the race course and provided with a longitudinal opening; (3) a mechanical conveyor including a track extending around the race course and located within the casing; (4) and a conveyor car mechanically operated upon said track and provided with an arm extending through the longitudinal opening of the casing in a projecting position over the track and adapted to carry a lure; (5) and a wheel rotatably mounted on and supporting the arm at the projecting end thereof." (R. p. 176).

Claim 2. "In an amusement, the combination (1) of a race track suited for dogs; (2) a covered rail track adjacent said course on one side; (3) a conveyor car mechanically operated on said track; (4) a horizontally extending arm hinged to said car extending midway of said course; (5) a wheel rotatably mounted near the end of said arm, and resting on the ground; (6) a platform supported by said arm, and (7) a lure or quarry mounted upon said platform for attracting the dogs." (R. p. 176).

Plaintiff's Exhibit No. 5 (side folio 177-178 opposite R. p. 186; see also R. pp. 187, 125, 127, 128) is here illustrated in cross section view of Respondents' apparatus:



(Note). The words "posts set in ground, boards, timbers, truss rod and continuous opening" exhibit the construction of the casing provided with a continuous longitudinal opening; the words "pivot connection" exhibits rigid support of the horizontal lure-carrying arm; the word "arm" exhibits the arm extending from the conveyor car through the longitudinal opening of the casing in a projecting position over the "ground line" (track), and the words "lure platform" exhibits the platform supported by the arm and the lure mounted on the platform.

Comparison of Claims 1 and 2 with Respondents' apparatus discloses an appropriation of the claims, except that Respondents' arm is rigidly supported on the car during the race, in lieu of the wheel support described and claimed in the patent.

(See also R. pp. 35, 39, 40; Master's Report, R. pp. 86, 87, 88, 97, 98; R. pp. 120, 121, 122, 126; Defendants' Exhibits Nos. 30, 31, 32, side folio 465-466, 467-468, 469-470, opposite R. p. 386; R. p. 171 (side folio opposite R. p. 170, 159-160, 161-162); R. p. 176; see also Defendants' Exhibit No. 2, side folio 211-212, 213-214, opposite R. p. 208; R. pp. 157, 164, 167, 168). Respondents' apparatus is located on the left-hand side of the race course opposite to the right-hand side thereof, and Respondents' rigidly supported arm is retracted into the casing at the termination of the race by means of trip or trigger mechanism whereby the lure is made to disappear, whilst the arm and lure of the patent is made to disappear into the casing by means of switching the car after the race is run. (See above references to the printed record).

Summary as to Patent No. 1,507,440, Claim No. 1.—The claim is: "in a housing for covering tracks and cars having laterally extending arm operated on said track, the combination of (1) posts set in the ground at the sides of said track; (2) timbers attached to said posts to form a frame; (3) boards attached to said timbers and posts to form a continuous enclosure above said track; (4) and having a continuous opening in one side of said housing

adapted to permit extension of the laterally extending arm therethrough; (5) and truss rods attached to the closed side of said housing adapted to support the side of said housing above the said continuous opening." (R. p. 180). Claims 2 and 3 provide for adjustable stay rods and adjustable screw threaded stay rods (R. pp. 179, 180). In his specifications, the patentee states, that the invention relates to means for concealing the track and conveyor car in a mechanical lure conveyor for dog-racing courses (R. p. 178) and the object is that of concealing the track and conveyor car from the dogs (R. p. 179). He further states that the invention is not restricted to the exact details of construction, but for the purpose of illustrating a particular embodiment reference is had to the accompanying drawings (R. p. 179).

Comparison of the above illustrated cross section view of Respondents' housing with Claim 1 of the patent, shows a literal translation of that claim. (Side folio 177-178 opposite R. p. 186; R. pp. 34, 36, 38, 40, 89, 90, 122, 127, 128).

Specifications of Error.

The Tenth Circuit Court of Appeals erred in finding and holding:

(1) That Patent No. 1,379,224, claims 1 and 2 are not infringed by Respondents.

(2) That Patent No. 1,507,440, claim 1, is not infringed by Respondents.

(3) That the judgment and bond for stipulated damages are void.

Argument.

Summary of Argument as to Patent No. 1,379,224, Claims 1 and 2.—Considering the high rank of this patent in the art to which it relates, these claims are entitled to generous treatment and to a range of equivalents commensurate with the scope of invention; that having described and claimed his device in his preferred form, the patentee is entitled to all other forms which embody the substance of a lure-carrying arm horizontally extending from the conveyor through the continuous longitudinal opening of the casing located on either outer side of the race course; that in their appropriation, Respondents have, by interchange, substituted for the preferred form of supporting said arm by movable or wheel support, the form of supporting said arm rigidly, without breaking up or essentially varying the principle and mode of operation pervading the original invention; that said preferred movable or wheel support is neither a distinguishing characteristic of the device nor essential to its patentability nor material to its operation; that said wheel support finds its mechanical equivalent in Respondents' form of rigid support of the patentee's arm, in that, either pertains to the working environment of the aforesaid inventive step, accessorial thereto and a matter of engineering selection; that no limitation is imposed on the patentee by the prior art, no disclaimer of equivalents for his said preferred form either in the specification, claims or Patent Office proceedings.

Accordingly, for a reversal of the decision below, it is urged:

Point A. Said patent (Claims 1 and 2) is entitled to a liberal construction and to a range of equivalents commensurate with its scope.

Point B. Substitution of a rigid for the wheel support of the horizontal arm and locating the device on the left outer side of the race course, does not avert infringement.

Point C. Patent Office proceedings discloses no express limitations of patentee's preferred form.

Summary of Argument as to Patent 1,507,440, Claim 1.—Considering that Respondents' housing device contains all the elements of the claim in the same combination constituting identity of function, operation, and result, for ground of reversal of the decision below, it is urged:

Point D. Patent No. 1,507,440 is valid.

Point E. Respondents have infringed Claim 1 of Patent 1,507,440.

Summary of Argument as to Stipulated Damage Bond.—Considering that Respondents voluntarily acquiesced in the order of the District Court withholding the temporary injunction by stipulating for the damages suffered by petitioner (plaintiff) and furnished bond to indemnify plaintiff for such damages; and considering that by the terms of said order and bond the same were limited to damages and not to Respondents' profits; that no evi-

dence of record justifies the conclusion that said bond was voluntarily given as a subterfuge for Respondents' profits, whether legally or illegally derived; it is urged as ground for reversal:

Point F. The decision below reversing the decree of the District Court is erroneous.

Point A.

Patent No. 1,379,224 (Claims 1 and 2) is entitled to a liberal construction and to a range of equivalents commensurate with its scope.

(a) Preliminarily, we approach this point from the prior art. "Coursing" is the ancient British sport of pursuing hares or other game with greyhounds when the game is started in sight of the hounds. Century Dictionary; New International Encyclopedia; Webster's New International Dictionary (Merriam Ed. 1927) p. 518; New Encyclopedia Brittanica 14 Ed. Vol. 6 p. 602; R. pp. 17, 18, 124, 135, 136. Retaining all of the exciting features of the sport of "Coursing" but eliminating the cruelties connected with the use of an animal victim as O. P. Smith says (R. p. 384), Hind (British) in 1884 (R. p. 300), Pinard in 1887 (R. p. 290), Moss (British) in 1896 (R. p. 398), Walsh in 1898 (R. p. 294), O. P. Smith in 1912 (R. p. 381) and Everett in 1913 (R. p. 297), by their patents proposed to inaugurate the use of artificial lures for greyhound racing.

Hind 1884 (R. p. 300, Defendants' Exhibit No. 11, side folios 335-336, 337-338) shows an inanimate lure travelling along a sunken tube or trough. Pinard 1887 (R. p. 290,

Defendants' Exhibit No. 8, side folios 319-320, 321-322) proposed a lure-carrier sliding or rolling on the ground connected with cable reeled in by a drum, said cable engaging anchored pegs along the course to give a zig-zag motion to the lure. Moss 1896 (R. p. 398, side folio 486) exhibits a device comprising a rail laid upon the race course, a flanged wheel mounted thereon, a motor geared to said wheel, said motor forming part of and carried by the lure, a trolley above said rail and adapted to supply electrical current to the motor as well as to support the mechanism by contact with a superimposed grooved pulley. He employs a small "hood" of insulating material designed to cover the trolley wire for protecting the dogs, for he says: "To avoid any danger from the dogs coming in contact with the live trolley wire, I cover the full length of the wire with a hood 28 of wood or other non-conducting material" (R. p. 401). As the dogs could only come in contact with the live trolley wire while running under it, this protection is useless since no provision is made for protecting the racing dogs against injury by striking their legs against the rail operating in the same plane as the trolley wire.

Each of the foregoing exhibits are devoid of applying the principle of guiding or carrying the lure by means of an arm.

Next in point of time is Walsh 1898 (R. p. 294, Defendants' Exhibit No. 9, side folio 325-326). He proposes two race courses susceptible of being used together or alternately. Each race course is separated, as to one by a

right outer fence and as to the other by a left outer fence. Between each fence and adjacent thereto he places his track and conveyor car. To protect both dogs and his travelling merchanisms and to conceal the merchanisms from the racing dogs, these fences must be high enough to prevent the dogs from leaping over the fences, and that necessitates the employment of an arm extending upwardly and outwardly vertically inclined in transverse direction to reach over and clear the respective fences. It further necessitates, as shown, a connection at the end of this vertically inclined arm, of another arm similar to a forearm (whether pliant as by the use of a cable or stiff by use of a rod or pole) extending vertically downward to a lure-carrying mat dragging on the ground. (R. p. 295, side folio 325-326 opposite R. p. 294). All this involves the situation of having his angular or elbowed arms operating in relatively vertical planes. Due to the awkwardness of his angular arm in its relation to the car, high speeds involved and the curves encountered, a problem in mechanics and in the law of centrifugal force is presented but not solved, in view of the absence of evidence that it ever worked experimentally or otherwise. O. P. Smith 1912 (R. p. 381 Defendants' Exhibit No. 29 side folios 457-458, 459-460) closely followed by Everett 1913 (R. p. 297 Defendants' Exhibit No. 10 side folios 329-330, 331-332) each involving the use of an underground tunnel located within and under the race course, an opening through the top, a conveyor car located in the tunnel and provided with a vertical arm extending through the opening on the outer end of which arm a lure is mounted.

Aside from the possibilities of short circuiting due to moisture in the tunnel, the impracticability of these two devices is obvious, for the opening must be wide enough to permit the vertical arm to freely pass and in that condition the dogs' toes would catch in the opening bringing about a crippling of the racing dogs thereby stopping the race or if too narrow to protect the dogs from being thus injured, there results a jamming of the arm and the consequent wrecking of the car enclosed in the tunnel, to say nothing of the delay affecting the patience of dogs and spectators during repair and removal of the wreck.

With the exception of Walsh, the uncontradicted opinion of the expert is, that the devices of Pinard, Moss, Smith 1912 and Everett are dog crippling apparatuses, and in other respects impractical and inoperative (R. pp. 119, 120, 122, 123, 124, 166, 167) and that Walsh's device is likewise impractical and inoperative at the required high speed. (R. pp. 166, 167).

(b) Smith proposed a radical departure in principle. (R. p. 171). He connected the two necessary cooperating elements of conveyor car and lure by an arm horizontally extending over the race course, and from conveyor to lure in closest proximity as fundamentally necessary to a practical functioning at high speed. Retaining this basic idea as indispensable, he had to overcome the difficulty of concealing the travelling conveyor from dogs and spectators without in any way affecting the application of the principle. The prior art presented an impassable barrier; so he surmounted it by placing the pro-

tecting fence on the far side of the rail track conveniently and relatively distant from the nearest side of the race course, thence from its upper portion by carrying it over to and directly in front of the outer side of the race course leaving a continuous opening for the free operation of his horizontal arm. In all this he produced function never performed before, terminating in a new and useful result never achieved before—a successful and complete dog race in pursuit of an inanimate lure. (Compare *Smith v. Springdale Amusement Park*, 39 Fed. 92, at pages 93 and 94, where the District Court concedes "that Smith was the first to realize that the lure could be carried upon the end of a horizontally extending arm" and that "it vitalized the whole device, etc." "Practically, all the elements of the combination co-operated in the final result, the accomplishing of a successful and safe race," p. 94). [redacted]ption of this principle or mode of operation pervading the invention has not been varied by Respondents is conceded.

But under *Sec. 4888 U. S. Rev. Stat.* Smith was required to embody that principle in what he considered the best mode; and in his specifications and drawings he describes his best mode, reserving unto himself all other modes or forms by declaring that the described and claimed invention "is not restricted to the **exact** details of construction disclosed herein, yet for the purpose of illustrating a **particular** embodiment thereof, reference is had to the accompanying drawings". (R. p. 172). This reservation thus carried into his claims is tantamount to claiming his device **substantially**, though not exactly, as described. (*Winans v. Denmead*, 15 How. at pages 342, 343; *Western Electric Co. v. La Rue*, 139 U. S. 601, 606). In

other respects that was unnecessary (*United States v. Societe, etc.*, Cail 224, U. S. 309, 328) for he teaches how to practice his invention in his preferred form by describing and claiming his horizontal arm as being hinged (Claim 2 R. p. 176, R. p. 173, side folio 161-162 member 25) to the conveyor car, and near or at its outer end supported by a wheel rotatably mounted (R. p. 174, lines 1, 2, 3); in short, that the wheel supports the hinged arm; and further, that the casing be located on the exterior or grandstand outer side of the race course as distinguished from its interior or infield outer side (R. p. 172, side folio opposite R. p. 170). As Respondents support Smith's arm by a rigid in lieu of the preferred wheel support and transfer his casing from the preferred right outer side to the left outer side of the race course, the question is, does the substitution and transfer avoid infringement of either Claim or both.

(c) We believe that this patent exhibits the application of a principle in dog racing devices theretofore unseen and new elements and functions not thought of or found in the prior art whereby a result dreamed of but never achieved culminated in the first successfully operating apparatus evidencing "the important but long delayed and therefore not obvious step", and on the basic idea of which all subsequent devices must necessarily depend. *Hildreth v. Mastoras*, 257 U. S. 27, 34; *Westinghouse v. Boyden*, 170 U. S. 537; *Diamond Rubber Co. v. Consol. Rubber Co.*, 220 U. S. 428, 434, 435, 436; *Hobbs v. Beach*, 180 U. S. 383, 399.

Smith's application for patent was filed in September, 1919, (R. p. 171); and whilst the burden is on Respondents, they have failed to show that any thing or any body produced an operatively successful device or complete dog race of this character, experimentally or otherwise. *Hildreth v. Mastoras*, 257 U. S. 27, 33; *Caffin v. Ogden*, 85 U. S. 120. Petitioner (plaintiff) produced evidence in negation. From Hind in 1884 to Smith in 1921 is 38 years. The prior art shows that for over a third of a century others have tried, patents have issued, but nobody ever succeeded or used them or attained any operative success. And it is undisputed that prior to this Smith 1921 patent application, to be exact prior to 1920, dog-racing in pursuit of an inanimate lure was unknown (R. pp. 17, 22, 23, 24, 27, 25, 40, 135, 158). The only evidence of an attempt was made by Smith in 1910 or 1912 when he sought to get a dog race out of his 1912 patent; that attempt resulted in operative failure and was abandoned (R. pp. 119, 120, 122, 123, 124, 129). Prior to 1920, Smith was a poor man (R. p. 18) and since that time he has been regarded in the sport which he has thus created by his patent as the original inventor of successful dog-racing apparatus employing an artificial lure. (R. pp. 17, 18, 22, 23, 24, 26, 27, 29, 30, 40). This new sport sprang into existence and its popularity maintained in widely separated parts of this country and elsewhere, engaging capital and labor, improving the breed and increasing the value of greyhounds—all as a direct result of the operative success of the patent. (R. pp. 18, 19, 20, 21, 22, 23, 24, 26, 28, 29, 30, 31, 38, 40, 41, 42, 43, 129). Added recognition is given by tribu-

tary inventors who claim an addition or improvement only for retracting his horizontal lure-carrying arm into his casing after the race is run, to an inoperative position. (See Creveling Patent 1924, R. p. 214, Defendants' Exhibit No. 4, side folios 217-218, 219-220; Shaughnessy Patent 1927, R. p. 209, Defendants' Exhibit No. 2, side folios 211-212, 213-214); *American Electric Rabbit, etc., v. Smith*, 26 Fed. (2nd) 1016; *Smith v. American Electric Rabbit, etc.*, 21 Fed. (2nd) 366, 371). It is believed that the character of the invention falls within the criteria established in *Hildreth v. Mastoras*, 257 U. S. 27, *supra*, and kindred decisions.

(d) On the other hand, enough is revealed so as to convince even those who are prejudiced against the art, that Smith's claims are to be liberally construed (*Eibel Process Co. v. Minnesota Co.*, 261 U. S. 45, 63) and he "is entitled to a reasonable range of equivalents measured by the advance he has made over older machines and is not limited to the specific form claimed and described, unless he has expressly so limited himself, or unless such limitation is necessary in order to save his patent from anticipation". *McSherry Co. v. Dowagiac Co.*, 101 Fed. 716, 721 (C. C. A. 6) per Taft, Lurton and Day, C. J.); *Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U. S. 405; *Dowagiac Mfg. Co. v. Minnesota Moline Co.*, 118 Fed. 136, 140, 141, (C. C. A. 8). The prior art never taught or suggested Smith's step, nor was any advance made in the usefulness of his device; nor has he expressly limited himself to the form claimed and described, as is shown by his specifications, nor by the Patent Office proceedings hereinafter reviewed in Point C.

Point B.

Substitution of a rigid for the wheel support of the horizontal arm and locating the device on the left outer side of the race course does not avert infringement.

(a) That these two forms are equivalents in the opinion of experts is not contradicted. (R. pp. 121, 122, 39, 40, 33, 35, 36). It is confirmed by the Patent Office experts as shown by the Creveling File Wrapper (R. p. 187, Plaintiff's Exhibit No. 8; 194, 197, 198, 203). Creveling specifically claimed every element of Patent 1,379,224 in his first claim "and a lure-supporting arm **sustained** on the car and extending through the slot of the housing to position the lure within the race track" (R. p. 194). This claim was rejected on Smith No. 1,379,224 (R. p. 197). The element was again repeated by way of amendment, thusly: "and a lure-supporting arm **sustained** on the car for movement over the race track" (R. p. 198). The Patent Office again rejected this Claim on May 9, 1923, stating "Claim 1 is again rejected on Smith of record in which every feature of the Claim is clearly disclosed in the same relation and performing the same function". (R. p. 201). Thereupon Creveling acquiesced by cancelling lines 6, 7, 8 of his Claim 1 reading "and a lure-supporting arm sustained on the car and extending through the slot etc.", (R. p. 203), and so amended the claim as to claim and exhibit his true invention, for retracting Smith's arm into his casing after the race to an inoperative position. (R. p. 203).

Indeed, the Patent Office proceedings of this Patent, hereinafter reviewed, sufficiently shows that, by the in-

terchange, no quality of invention or novelty is involved in selecting a form of support, as that is in the common field of mechanical construction. See also *Thomson-Houston v. Athol*, 91 Fed. 767, 765 (C. C. A. 1) quoting with approval *Thomson-Houston v. Athol*, 83 Fed. 203 (C. C.) and recognized in *Commissioners Decisions 1897*, p. 694, where it was held, that to support a working part, whether rigidly or elastically, any mechanical engineer must select and as he may select either, such selection is mechanical skill. Respondents have merely transferred the support at the projecting end of the arm into its connecting end on the car without in any manner varying the principle, mode of operation or result. (R. p. 35). (*Sanitary Ref. Co. v. Winters*, 280 U. S. 30). The change was therefore a question of degree in the use of substantially the same means. (*Brush v. Condit*, 132 U. S. 27, 39).

Applying the test of interchangeability or non-interchangeability (*Miller v. Eagle Mfg. Co.*, 151 U. S. 208), the arm may be, in fact is, used in either apparatus whether supported rigidly or movably while the apparatus is in operation, for there is no radical unfitness, no radical change in function or result, merely a change in form; since the element of support pertains to the working environment of the inventive step consisting of the horizontal-lure-carrying-arm extending through the casing. Accordingly, changes in form or construction of parts will not avoid infringement where the principle or mode of operation of the patent is taken; or where the changed form or construction is neither the distinguishing characteristic, nor material to the device or its operation. *Winans v. Denmead*, 15 How. 342; *Burr v. Duryee*, 1 Wall. 531, 573;

Sewall v. Jones, 91 U. S. 171; *Ives v. Hamilton*, 92 U. S. 426, 431; *Robertson v. Blake*, 94 U. S. 728, 734; *Seymour v. Osborne*, 11 Wall. 516, 560; *Elizabeth v. Pavement Co.*, 97 U. S. 126, 137; *Machine Co. v. Murphy*, 97 U. S. 120, 125; *Marsh v. Seymour*, 97 U. S. 348, 359; *Hoyt v. Horne*, 145 U. S. 302, 308; *Hobbs v. Beach*, 180 U. S. 383, 401; *Sanitary Ref. Co. v. Winters*, 280 U. S. 30; *Auto Vacuum v. Sexton*, 239 Fed. 898 (C. C. A. 2); *Litson v. Alaska*, 130 Fed. 129, 142, 143 (C. C. A. 9); *McSherry v. Dowagiac*, 101 Fed. 716, 722 (C. C. A. 6); *Metallic Extraction v. Brown*, 104 Fed. 345, 353 (C. C. A. 8); *Dowagiac v. Minnesota Moline Plow*, 118 Fed. 136 (C. C. A. 8); *Lourie v. Lenhart*, 130 Fed. 122, 129 (C. C. A. 8); *Wayne v. Benbow Brammer*, 168 Fed. 271, 278 (C. C. A. 8); *Adam v. Folger*, 120 Fed. 260 (C. C. A. 7); *Vroonan v. Penhallow*, 179 Fed. 296 (C. C. A. 6); *Wellman v. Cramp*, 3 Fed. (2nd) 531, 533 (C. C. A. 6); *Yancey v. Enright*, 230 Fed. 641 (C. C. A. 5); *Reece v. Globe*, 61 Fed. 958 (C. C. A. 1); *Kings County &c. v. U. S. Consol. &c. R. Co.*, 182 Fed. 59, 63 (C. C. A. 9); *Angelus v. Wilson*, 7 Fed. (2nd) 314 (C. C. A. 9). *Walker on Patents*, Sixth Edition, Sec. 419, Vol. 1, p. 517.

(b) In his testimony, witness Keen says that he had known Smith since 1909, (R. p. 119), but that he was away from him from about 1916 to about September, 1925. (R. p. 122). There is no evidence of Keen having any contact with Smith within two years prior to filing his application for patent on September 4th, 1919, (R. p. 171), or from 1916 to 1925. So, when Keen testifies that "Mr. Smith built cars with rigid arms and had the arms snap off on him and that is why he went to the wheel and

hinge" (R. p. 125), in the absence of other evidence as to dates, the witness was evidently referring to what he had seen or had been told by Smith subsequent to 1925. Keen's testimony in this regard is given prominence in the opinion below and construed as implying that Smith had determined the rigid arm to be "impractical" or "unworkable", and in consequence, the wheel support constituted the invention. This is error. Besides, no account is taken by the opinion that crystallization of the rigid arm consequent on car vibration and having a tendency to snap off depends to some extent upon the quality and kind of material used as well as the length of the arm. Nowhere is it shown and nobody has said, according to this record, that the rigid arm is unworkable or impracticable, or that the dead Smith had so regarded it. Expert Keen, in his testimony says that both forms are equivalents, (R. pp. 121, 122, 39, 40) and in his opinion the wheel support is **best,** because it adds less friction to the car, avoids crystallization of the arm from car vibration and there is **less chance** of the arm snapping off than in the employment of a rigid arm (R. pp. 122, 125, 126). But that testimony or Smith's preference ought not to be extended so as to mean, as the learned Court says, that the rigid arm was found by Smith to be "unworkable" or "impracticable" and from that statement conclude that the primary and substantial function of the wheel support was not support as stated in the specifications and claim, but was described and claimed for the purpose of avoiding crystallization and snapping off. The specification points out the best mode; the Court should have so concluded in view of *Section 4888, U. S. Revised Statutes,* which requires the inventor to state in his description the mode which he contemplates to

be the best. *Walker on Patents*, 6th Ed., Vol. 1, Sec. 160, pp. 188, 189; *Morey v. Lockwood*, 8 Wall. 230; *Continental Paper Bag v. Eastern Paper Bag, etc.*, 210 U. S. 405, 418; *Vroonan v. Penhollow*, 179 Fed. 296, 302. This is elementary, and the foundation of the doctrine of equivalents; so that whether the rigid arm works better or worse is of no consequence. *Winans v. Denmead*, 15 How. 342; *Hoyt v. Horne*, 145 U. S. 302, 308, 309; *Brush v. Condit*, 132 U. S. 39-50; *Marsh v. Seymour*, 97 U. S. 348, 359; *Murray v. Detroit Wire Co.*, 206 Fed. 465, 468 (C. C. A. 6); *Nathan v. Howard*, 143 Fed. 889 (C. C. A. 6); *King Axe. v. Hubbard*, 97 Fed. 795 (C. C. A. 6); *Woodward v. Boston Lasting Co.*, 60 Fed. 283 (C. C. A. 1); *Yancey v. Enright*, 230 Fed. 641 (C. C. A. 5); *Scheible Co. v. Clark*, 217 Fed. 760, 770, 771 (C. C. A. 6); *Temco v. Apco*, 275 U. S. 319, 328.

We believe that the vice of the opinion, not only lies in shutting the eye to the Statute, but in incorporating into the specification and claims, an express limitation which is not there and thus restrict the claims to a blind literalism. To expose the error we invoke the Statute and the decisions hereinbefore cited, as also *Walker on Patents* (6th Ed.), Vol. 1, p. 501, Sec. 412.

(c) The opinion below agrees with the "contention" (R. pp. 157, 160, 161; R. p. 126) of Respondent Shaughnessy, a former employee of Smith (R. pp. 21, 25, 27, 28, 30, 32, 135, 151, 153, 154, 158) by declaring that Smith's adoption of his aforesaid best mode for practicing the invention served the purpose of avoiding crystallization and consequent breaking of the arm whereas defendant's rigid arm answers a distinctly different purpose,

that of causing the lure to bounce about more nearly simulating a hare in flight, and from this, the opinion concluded that the substantial function performed by the wheel and hinge (is) not served by the rigid arm. (R. p. 409, *Magic City v. Smith*, 38 Fed. (2nd) 172, 173). The answer is, first, that the claims are not limited to a lure in the form of a stuffed hare, a ball or a handkerchief will do; and second, that since the asserted purpose is not set forth in the description or claims, one does not escape infringement by a double or analogous use (*Western Electric v. LaRue*, 139 U. S. 601) or by the fact that the offending device lacks one of the purposes or functions of the patented device where such purpose or function is not claimed in the patent (*Western Electric v. LaRue*, 139 U. S. 601; *Hoyt v. Horne*, 145 U. S. 302, 308, 309; *Hobbs v. Beach*, 180 U. S. 383, 401; *Litson v. Alaska*, 130 Fed. 129, 142, 143, C. C. A. 9) or that it performs the primary function of supporting the arm in substantially the same manner (*Ibid.*) or by adding to or taking from the patented device, or even by making it more or less efficient while retaining its principle and mode of operation and attaining its results by the same or equivalent mechanical means. (See authorities hereinbefore cited). Indeed, the asserted purpose gives significance to the change as colorable. *Sanitary Ref. Co. v. Winters*, 280 U. S. 30; *Smith v. American Electric Rabbit*, 21 Fed. (2nd) 366, *Ibid.* 26 Fed. (2nd) 1016.

(d) Respondents argued below in line with a suggestion of the District Court in *Smith v. Springdale Amusement Park*, 39 Fed. (2nd) 92, 94, 95, that regardless of Smith's reservation in his specifications and the re-

servation accorded him by law as to form and location, the preferred form of wheel support claimed, considered in connection with Smith's escape for the lure and the preferred location of the apparatus on the right outer side of the race course, is nevertheless reduced to a voluntary limitation on the theory advanced that if the track was slightly banked at the curves, the lure would perceptibly leave the ground at such curves and in direct proportion to the angle of banking, and this accounts for the wheel support implying flexibility and the location of the apparatus on the right outer side, with the asserted conclusion that the arm rigidly supported would not work on the right outer side of the race course at the curves (39 Fed. [2nd], pp. 94, 95, *supra*).

The specification and claims are not limited to an oval shaped race course having two outer sides, though that form is illustrated and described as one of several; it includes a rectangular or straight-of-way course, and the straight-of-way section of the illustrated oval course, as to which, the foregoing theory is inapplicable; and yet, the use of the rigid arm will nevertheless infringe at some stage of its operation it not being necessary that it should infringe at all stages. *Sewall v. Jones*, 91 U. S. 171; *Hoyt v. Horne*, 145 U. S. 302, 308; *Farrington v. Haywood*, 35 Fed. (2nd) 628, 631 (C. C. A. 6).

The statement that the lure would perceptibly leave the ground on the curves because of banking is, we think, inadvertant, unless the angle of the banked railbed is disproportioned to the angle of the banked course-bed; for what is meant is, that the lure on the end of the rigidly

supported arm would travel closer to the ground at the curves on that side and leave the ground at the curves on the other side, since the rigid arm assumes the same inclined position as the car, produced by the banking of the railbed. On the other hand, it is inadmissible (and without any engineering authority or evidence) to bank the course-bed around the curves so as to fit the assumption, which we believe is opposed to the appropriate manner of construction under given conditions. For the hypothesis fails to take into consideration the length of the arm and the importance of grades of course-bed and railbed, so indispensable in engineering practice. The unchanging position of the moving rigid arm relative to the course-bed is regulated and proportioned around the curves according to suitable grades of course-bed and railbed. By raising the desired grade of the railbed and lowering the desired grade of the course-bed, the angle of banking the railbed at the curves has practically no effect upon changing the extending position of the rigid arm relative to the bed of the course. No evidence was introduced by either party; these details of designing the railbed and course-bed for cooperation with the rigidly supported arm is purely a matter for the engineer; it is outside the patent. With the movable support of the arm, no raising of the railbed or lowering of the course-bed is required, which may or may not account for Smith describing and claiming this subordinate element in the mode he considered best for the application of his principle and the functioning of his fundamental cooperating elements. In view, therefore, that the wheel support of the arm, implying flexibility, furnished an accessory to his underlying invention, the liberal rather than the strict rule of equivalency obtains, especially in the Sixth

Circuit. *Wellman v. Cramp*, 3 Fed. (2nd) 531, 533 (C. C. A. 6); *Safety Automatic v. Edwards*, 7 Fed. (2nd) 92, 94 (C. C. A. 6); *Bundy v. Detroit*, 94 Fed. 521, 538 (C. C. A. 6); *McSherry v. Dowagiac*, 101 Fed. 716, 722 (C. C. A. 6).

Nor is the preferred form affected or converted into a voluntary limitation by Smith's means in providing an escape of the lure into the casing at whatever desired point on either side of the course. The claims are not concerned with this feature; on the other hand, the escape is effected by switching the conveyor car, and obviously, whether the wheel support or the rigid support of the arm is used, the car may be switched anywhere, in the straight-of-way or around the curves, on either side. This is manifest. (R. p. 121).

(e) With respect to placing the apparatus on either outer side of the race course, the Fifth and Tenth Circuit Courts of Appeal are substantially in accord. (R. p. 409; *Magic City, etc. v. Smith*, 38 Fed. (2nd) 170, 173; *American Electric Rabbit, etc., v. Smith*, 26 Fed. (2nd) 1016, and *Smith v. American Electric Rabbit, etc.*, 21 Fed. (2nd) 366, 369.

As shown in the specifications and drawing, the apparatus is preferably located on the right outer side, (see drawing, side folio opposite R. p. 170), the offending device being located on the left outer side. Not having expressly limited himself to any one outer side, the transposition is unsubstantial, (*Smith v. American Electric Rabbit, etc.*, 21 Fed. (2nd) p. 369, and cases there cited), there being no change in function, operation or result.

Point C.

Patent Office Proceedings disclose no express limitations of patentee's form.

(a) On review of the File Wrapper (R. p. 220), it appears that rejected original, amended and revised or new Claims 1 and 2 (R. pp. 220, 227, 231, 233, 235, 237, 238, 239, 240) relate to and claim an armless lure conveyor similar to Pinard (R. p. 290, side folios 319-320, 321-322) and Moss (R. p. 398, side folio 486) and a housing for concealing it, the ground of rejection being that as Moss was provided with a housing, it would not be invention to provide a housing for an armless lure conveyor as claimed in rejected original, amended and revised or new Claims 1 and 2 (R. pp. 237, 238, 240; R. p. 401, side folio 486). As these two rejected, amended and revised claims are not concerned with the claims in suit or the offending device, it is to inquire whether or not Smith's special reservation contained in his specifications (R. p. 172) and the reservations accorded him by law (*United States v. Societe Anonyme, etc., Cail*, 224 U. S. 309, at page 328, and cases there cited) as to his preferred form of supporting his horizontal arm by a wheel support, has, notwithstanding the reservation, been restricted to that form only or otherwise reduced to an express limitation as to form by way of estoppels contained in the File Wrapper.

That inquiry brings us to rejected original as amended and allowed Claim No. 3. (R. pp. 228, 231, 233, 234, 237, 238, 239, 240). Original Claim No. 3, reads as follows:

> "3. In an amusement, the combination of (1) a race track suited for dogs, (2) a covered rail

> track adjacent said course, (3) a conveyor car mechanically operated on said track, (4) **an arm attached to said car extending midway of said course,** (5) **a wheel rotatably mounted on said arm,** and (6) a lure mounted on said arm." (R. p. 228).

This original claim 3 was rejected on Walsh 611, 876, October 4th, 1898, (R. p. 231). As the Examiner "contents himself with a reference, we look to the matter referred to, to ascertain his meaning." *(Vroonan v. Penhollow*, 179 Fed. 296, 305 [C. C. A. 6]; *Frey v. Marvel*, 236 Fed. 916, at page 922 [C. C. A. 6]). Turning to the Walsh patent (R. p. 294, side folio 325-326), we find a race track suited for dogs, an uncovered rail track adjacent said course, a conveyor car mechanically operated upon said track, **an arm attached to said car extending midway of said course;** but we do not find a covered rail track or a wheel rotatably mounted on said arm or a lure mounted on said arm. Accordingly, the necessary inference from the Examiner's objection was, that there is neither invention nor novelty in supporting an extending arm by a wheel rotatably mounted (C. D. 1897, p. 694). Uninformed of the specific ground of objection, Smith amended the claim still retaining, "an arm attached to said car extending midway of said course", and "a wheel rotatably mounted on said arm", so as to read as follows:

> "Claim 3. In an amusement, the combination of (1) a race track suited for dogs, (2) a —rail track adjacent said course, (3) a conveyor car mechanically operated on said track (4) **an arm attached to said car extending midway of said course,**

> (5) **a wheel rotatably mounted on said arm,** (6) a lure mounted on said arm— and a casing extending around the race course and receiving and concealing the track and the conveyor car and provided with a longitudinal opening through which the said arm extends." (R. pp. 233, 234).

In presenting this amendment, Smith's attorney remarked "Claims (2 and) 3 against which the Walsh Patent was cited have (has) been amended to include the housing extending around the track and concealing the mechanical conveyor. This element is not present in the Walsh Patent." (R. 235). As thus amended, the claim was again rejected in these words: "Claims 1, 2 and 3 are rejected on either Walsh or Moss, both of record. Moss is provided with a housing and it would not be invention to provide Walsh with one." (R. p. 237). From this rejection, it is clear, the Examiner then considered that the claim read on Walsh and it constituted neither invention nor novelty, to encase Walsh's conveyor car having "an arm attached to said car extending midway of said course"; and furthermore, the twice repeated inclusion of "a wheel rotatably mounted on said arm" involved neither invention nor novelty, but a detail, mechanical selection or form of supporting an extending arm insufficient to distinguish it from the art of record, otherwise the claim would have been allowed as a patentable improvement on Walsh.

Although the Examiner limited his objections to the Walsh Patent and to housing his conveyor car having an extending arm, it is apparent that Smith's attorney broadly claimed an extending arm irrespective of its angu-

larity or an arm extending upwardly, outwardly and thence downwardly, as in Walsh, or whether it operated in a vertical plane, whereas the gist of Smith's invention, its fundamental element, principle and mode of operation was the straight out lure—carrying arm laterally extending and operating exclusively in a substantially horizontal plane. Accordingly, this original claim 3 as amended was cancelled (R. p. 237) and a new claim propounded as follows:

> "3. In a dog racing amusement, (1) a race course suited for dogs, (2) a casing extending around the outer side of the race course and provided with a longitudinal opening, (3) a mechanical conveyor including a track extending around the race course and located within the casing, (4) and a conveyor car operated upon said track and (5) provided with an arm extending **through** the longitudinal opening of the casing **in a projecting position over the track** and adapted to carry a lure, (6) and a wheel rotatably mounted on and supporting the arm at the projecting end thereof". (R. p. 238).

In his remarks, Smith's attorney challenged the Examiner to point out a casing as called for in either of the three claims, for he says: "Applicant is unable to find such a casing in the British patent to Moss and the Examiner is respectfully requested to apply the references to the extent of pointing out where this housing is shown". (R. p. 239). To which challenge, the Examiner responded as follows: "Case reconsidered as amended Nov. 10, 1920, Claims **1 and 2** are again rejected on Moss. The housing of Moss is Member 28. The remaining claims appear allowable." (R. p. 240).

Right here, as already observed, Claims 1 and 2 merely claimed a housing or casing extending around the race course receiving and concealing the conveyor car (R. p. 237, 238), and made no claim for a casing provided with a longitudinal opening as in Claim 3, nor did Claims 1 and 2 claim an extending arm at all; but these Claims 1 and 2 contemplated and claimed an armless mechanical conveyor as in Pinard and Moss. This affords the reason why the Examiner rejected Claims 1 and 2 (R. pp. 237, 238, 240) and accepting the challenge he said: "The housing of Moss is member 28. The remaining Claims (Claims 3, 4, 5, 6) appear allowable." Again turning to the Moss Patent (R. p. 398, side folio 486; R. p. 401), member 28 is a "hood" protecting a trolley wire within the race course proper and sinuously extending around it but not on either of its outer sides; nor does this "hood" show a longitudinal opening. In consequence, whilst the Examiner rejected Claims 1 and 2, he allowed Claim 3 (R. p. 240) and after adjustment of the numerals (R. p. 240) the allowed Claim 3 became Claim 1 of the Patent. (*Hildreth v. Mastoras*, 257 U. S. 27, 33, 34).

Parenthetically, in the rejected and original Claim 3 and as amended, the wheel support is included and reads: "A wheel rotatably mounted on said arm", whilst in allowed Claim 3, it reads "a wheel rotatably mounted on and supporting the arm at the projecting end thereof". (Compare R. pp. 228, 233, 238). This is a mere change of expression having substantially the same meaning, although not required by the Examiner, but in view of the specifications, that change in expression clarifies the clause according to the description (R. p. 174, lines 1, 2, 3) in that

the function of the wheel is to support the arm (*Hubbel v. United States*, 179 U. S. 77, at page 80).

Now, comparing this allowed Claim 3 (R. p. 240) with rejected Claim 3 (R. pp. 228, 231) as amended (R. pp. 233, 234, 237) it is clear, that in the rejected original and amended Claim 3, the arm element was broadly claimed, thusly: "an arm attached to said car extending midway of said course". That clause plainly and broadly covered an arm vertical or verticallly inclined and operating in a vertical plane as in Walsh (where his extending upper portion of the arm reached upwardly in transverse direction vertically inclined to clear his fence and his jointed forearm directed vertically downward) as well as a horizontally extending arm and operating in a horizontal plane, as in Claim 4 of the File Wrapper, Claim 2 of the Patent. Evidently, the Examiner had this distinction in mind during the course of his examination, and it was not until the contested Claim 3 was framed to restrict the **position** of the arm as extending **through** the longitudinal opening of the casing in a projecting position **over** the track, that the claim was allowed. Herein lies the dominating element, so recognized by the Examiner in his allowance of Claim 3.

Smith's attorney at all times insisted that the casing provided with a longitudinal opening and in which the conveyor car and tracks were located and co-operating with the arm was new, and although the examiner had by his rejection of amended Claim 3 disagreed, nevertheless he finally yielded to Smith's insistence as shown by his final rejection of Claims 1 and 2 and his final allowance of Claim 3. But aside from the Examiner's concession, Re-

spondent's device contains that and all the fundamental co-operating elements, the departure from the letter of the claim consisting in the form of supporting the arm.

Nowhere in the File Wrapper, or in the prior art or in the specifications, is there to be found anything whereby the Patent Office or the patentee had regarded the wheel support of the arm as exclusive of all other forms of support or as constituting it a distinguishing characteristic. Smith at no time was required to limit himself to a wheel support in order to secure the allowance of his claims. *Bundy v. Detroit, etc.*, 94 Fed. 524, 542, 543 (C. C. A. 6). Accordingly, the element of wheel support of the arm remains unaffected as to the patentee's preferred form, freed from the charge of an express limitation, separable from the substance and pertaining solely to the working environment of the inventive step. *(Bundy v. Detroit, supra).*

Reduced, therefore, to a final analysis, the difference between rejected and as amended Claim 3 and allowed Claim 3, is clearly defined. By the rejections and Smith's acquiescence therein, he has disclaimed broadly an extending lure-carrying arm attached to the conveyor car, whereas by the allowance he has limited himself to a lure-carrying arm extending through the longitudinal opening of the casing in a projecting position over the track, nowhere to be found in the prior art. This is the limiting effect of the rejection, and reading directly on Respondent's device. For since estoppels must rest on a definite basis, the familiar rule followed in *I. T. S. Rubber Co. v. Essex*, 272 U. S. 429,444, and kindred decisions does not carry over; nor does it contemplate a net result as a limi-

tation on every element in the allowed claim; nor does it resolve the patented device or an accessorial element claimed in the preferred form into a disclaimer of all other forms, particularly where that preferred form is outside the grounds of rejection or not controlled by the references of the prior art. *Crown Cork & Seal Co. v. Sterling*, 217 Fed. 381, at pages 390, 391, 392 (C. C. A. 6); *Vroonan v. Penhollow*, 179 Fed. 296, 305 *et seq.* (C. C. A. 6); *Wayne v. Benbow-Brammer*, 168 Fed. 271, 278, 279 (C. C. A. 8); *National Hollow B. B. Co. v. Interchangeable Co.*, 106 Fed. 693, 713, 714 (C. C. A. 8); *Bundy v. Detroit, etc.*, 94 Fed. 524, 543; *Hildreth v. Mastoras*, 257 U. S. 27, 33, 34. In short, the estoppel is co-extensive with the disclaimer and no further, for "to be estopped by the action of the Patent Office, the patentee must be shown to have surrendered something which he **now** claims in order to obtain that which was allowed". *Bundy v. Detroit, supra.* Smith was never required to surrender anything except as stated; and when we limit him to the lure-carrying arm extending through the continuous longitudinal opening of the casing in a projecting position over the track we have given to the rejections of claim 3 every effect that is required.

This conclusion is recognized by the Fifth Circuit Court of Appeals in *American Electric Rabbit, etc., et als., v. Smith*, 26 Fed. (2nd) 1016, agreeing with the conclusions of the District Court in *Smith v. American Electric Rabbit, etc., et als.*, 21 Fed. (2nd) 366, at page 371. It is likewise recognized by the Tenth Circuit Court of Appeals in its opinion below respecting Respondents' asserted limitation as to the location of the casing around the outer side

of the race course where "it was argued that Claim 3, as applied for, was rejected, and later allowed when the location was limited by amendment to the 'outer side' ". (R. p. 410); *Magic City Kennel Club v. Smith*, 38 Fed. (2nd), at page 173; and after stating the familiar rule citing *I. T. S. Rubber Co. v. Essex*, 272 U. S. 429, and other cases, that Court found and held that "the Patent Office made no decision on the question of location of the casing" * * * "The matter of location was not adjudicated, and the cited cases do not apply". (R. p. 410); *Magic City Kennel Club v. Smith*, 38 Fed. (2nd) at page 173.

True, the reasoning of that correct finding and holding as to the location of the casing is in discord with the Court's reasoning and conclusion respecting Smith's preferred form of supporting the arm wherein the Court said: "The Patent Office never questioned the patentability of the device of a horizontal arm hinged to the car and resting on a wheel" * * * "no amendment suggested as to that feature" * * * and from which the Court concluded: "The law laid down in *I. T. S. Rubber Co. v. Essex Rubber Co.*, 272 U. S. 425, 444, 47 S. Ct. 136, 141, 41 L. Ed. 335, is applicable that 'if the claim to a combination is restricted to specified elements all must be regarded as material.' " (R. pp. 409, 410, *Magic City, etc., v. Smith*, 38 Fed. [2nd] pp. 172, 173). The conclusion is manifestly *non sequitur*, unless qualified by "equivalency".

As no question was raised in the Patent Office proceedings in respect to the location of the casing, and by the rejections and acquiescence in original and as amended

Claim 3, the Patent Office decided and Smith conceded that the wheel support disclosed neither invention nor novelty, was not the distinguishing characteristic of the claim but an accessorial element involving mechanical selection, it is easy to perceive the sounder reasoning and the inapposite-ness of the cited cases by realizing that self-imposed limitations or estoppels in the Patent Office proceedings are to be marked off according to the issue therein definitely raised and determined. *Hildreth v. Mastoras*, 257 U. S. 27, 33, 34.

(b) Coming to Respondents' contention refuted by the opinion below and by the Fifth Circuit Court of Appeals, that as Respondent's casing is located on the interior outer side relative to its race course, or side facing the infield or inner oval, the location of the casing in allowed Claim 3 is reduced by estoppel to the exterior outer side or side facing the outfield or grandstand.

At no time was the location of the casing required to be restricted to the exterior outer side. The rejection was confined to the Examiner's holding that it was not invention to provide Walsh's rail track and car with a casing. In revising allowed Claim 3, the casing was claimed substantially as described in the preferred location. There was nothing in the rejections or rejected claims nor in the prior art that imposed such a limitation as contended for. Aside from the location claimed, being the one preferred by reference to the specifications and drawing (Side folio opposite R. p. 170, R. p. 172), the term "outer side" is broad enough to include either outer side as "a race course suited for dogs" comprises any shape or size desired

whether rectangular, straight-of-way or parallelistic oval having two external sides or fences oppositely disposed and constituting the race course, (as distinguished from a circular plane surface) either of which has two outer sides—right outer and left outer, as well as between which there are two inner sides—right inner and left inner.

Point D.

Patent No. 1,507,440 is valid.

(a) Albeit not specifically in issue, patentability is questioned by the opinion below. (R. p. 411; *Magic City, etc., v. Smith*, 38 Fed. (2nd) 173).

In his specification, Smith says: "My invention relates to means for concealing the track and conveyor car in a mechanical lure conveyor for dog racing courses. The object is to provide a suitable housing for concealing the track and conveyor car from the dogs and which form a continuous housing around the race course with a continuous opening upon the side towards the course". (R. pp. 178, 179). Again, "In the foregoing construction, it will be seen that the entire track and conveyor car are concealed from the dogs, the only portion being exposed to view are the arm and parts mounted thereon". (R. p. 180). Nor is the invention intended to cover or does cover housings other than for dog racing apparatus having a laterally extending arm, for each claim contains the relative and limiting introductory phrase "In a housing for covering tracks and cars having laterally extending arm operated upon said track", etc., and "in a continuous housing for concealing", etc. (Claims 1, 2, 3, R. p. 180). And further-

more, the Examiner indicated that the claims be thus confined as a basis for his consideration and allowance. (R. p. 261).

Keeping in mind this limitation, the patent relates to the casing element called for in Patent No. 1,379,224, and a result of a separate application co-pending with and divided out of that Patent Application as suggested and required by the Examiner. (R. pp. 231, 237, 239). Accordingly, it is a subcombination patent, operating conjointly as to use with those elements of Patent No. 1,379,224, in performing the subordinate interdependent function of concealment and is therefore expressly limited in its utility to perform its appropriate function in a dog racing device having a laterally extending arm and of which it forms a part. *Philadelphia, etc., R. R. Co. v. Dubois*, 12 Wall 47; *Gill v. Wells*, 22 Wall 1; *Canda v. Michigan*, 124 Fed. 486, 489, 490 (C. C. A. 6); *Thomson-Houston v. Black River, etc.*, 135 Fed. 759 (C. C. A. 2); *Thomson-Houston v. Elmira*, 71 Fed. 396 (C. C. A. 2).

Minus the expressed relation and limitation, the housing described is minus utility. That relation suggested the idea of concealment, but how and in what manner? There may be many ways for carrying it out but any manner is necessarily conjoined with the disclosure embodying the limitation, thus constituting an improvement on or addition to the original invention. (*Seymour v. Osborne*, 11 Wall. 516).

This contribution is exhibited by the Walsh Patent, which has as its fundamental element a laterally extending arm, angular though it be, yet operating on the track

in vertically inclined planes. Like Smith, he realized the necessity of concealing his mechanisms from the dogs, and he stepped in that direction, not by means of a housing but by means of a relatively high fence. As heretofore shown, Smith carried out this idea of concealment but in a radically different way, by placing his fence on the far side of the rail track and from its upper end bringing it over towards the outer side of the course, thus producing cooperation in the free movement of his arm through the longitudinal opening and that of concealing the mechanisms from the dogs. It never occurred to Walsh or to any mechanic having his patent before him to conceal his mechanisms other than by means of a fence, but the same idea of concealment occurred to Smith and he carried it out by another and different means. *Hobbs v. Beach*, 180 U. S. 383, 392, 393. So, what would have occurred to a mechanic without his exercising the inventive faculty, is clearly uncertain, inconclusive, unreliable and further complicated by speculating as to his capacities and attainments. *Hobbs v. Beach*, 180 U. S. 383, 392; *Webster Loom v. Higgins*, 105 U. S. 580; *Kremetz v. Cottle Co.*, 148 U. S. 556; *Potts v. Creager*, 155 U. S. 597, 608; *Leeds & E. Co. v. Victor, etc., Co.*, 213 U. S. 325, 332, 333; *Kurtz v. Belle Hat*, 280 Fed. 277, 281 (C. C. A. 2).

Believing that the test of invention is dependent upon objective evidence free from the influence of subjective bias, one must determine what is or what is not mechanical skill, not from what is simple and obvious after

the fact, but from what is new and useful; for it must be shown that the invented thing has heretofore been produced either in fact or communicated by publication. Slotted tubing, housings for third rail, coverings for loading platform, canopies at the entrance of hotels, theatres and residences, are not adaptable for or combine all the elements, functioning substantially in the same way as the housing in suit, or having the same objects and purposes and producing or being capable of producing the same result of covering or concealing tracks and cars having laterally extending arm operating on a dog race course (*Eibel Process Co. v. Minnesota Co.*, 261 U. S. 45, 66; *Seymour v. Osborne*, 11 Wall. 516, 542, 548; *Canda v. Michigan*, 124 Fed. 486, 492. But the opinion below seemingly rests on Bertram (R. p. 356, side folio 417-418) as an anticipation.

Glancing at Bertram's specifications and his third rail cover, it was designed with a view of protecting the third rail from the weather, snow, sleet, etc., he had no purpose of covering or concealing tracks and cars having laterally extending arm operating on a dog race course. Bertram's cover consisted of a bottom board, a vertical side board insulated, a top board and two side boards separated by a longitudinal opening, all nailed and joined together to form a continuous cover and supported integrally by reason of its small size. Ordinarily, whilst size, proportion and degree are inconsequential factors, in Bertram's cover, they are essential and functional since any increase in size, proportion or degree would be objectionable and un-

necessary. It is so small, that the rigidity of its frame is inherent in the structure, requiring no posts, timbers attached to posts, boards or truss rods adapted to support the side above the continuous opening. This furnishes an additional reason why Bertram's construction was limited to its own special purpose. Smith's housing could not stand without posts, timbers, boards and truss support of his top side.

It is argued that Smith's changes being structural, any mechanic could have done it, but, in rejoinder, such a change produces a more useful, beneficial and different result coupled with the presumption arising from the grant and the extensive use of Smith's housing in the dog racing art. *(Seymour v. Osborne*, 11 Wall. *supra; Canda v. Michigan, supra).* So Bertram's patent cannot be considered as an anticipation since it does not disclose the purpose, means and mechanism for accomplishing the end of the patent in suit, and which are restricted by Bertram's disclosure to the accomplishment only of a substantially different and limited purpose. For, accidental results, not intended and not appreciated, do not constitute anticipation. *Eibel Process v. Minnesota &c. Co.*, 261 U. S. 45, 66; *Gordon Form & Co. v. Wolcott & Co.*, 32 Fed. (2nd) 55 (C. C. A. 6), and cases there cited. *Western Electric v. LaRue*, 139 U. S. 601; *Hobbs v. Beach*, 180 U. S. 383, 392; *Tilghman v. Proctor*, 102 U. S. 707, 711.

Since, therefore, Bertram's cover was not designed by him, nor adapted nor actually used for the performance of the function of concealing lure conveyor mechanism

having laterally extending arm operating on a dog-race course, it is not anticipation that Bertram's cover might, by modification, be made to accomplish the function of the patent in suit. *Topliff v. Topliff*, 145 U. S. 156, 161; *Seymour v. Osborne*, 11 Wall. 516; *National Hollow B. B. Co. v. Interchangeable Co.*, 106 Fed. 693 (C. C. A. 8); *Canda v. Michigan*, 124 Fed. 486 (C. C. A. 6); *Wayne v. Benbow Brammer*, 168 Fed. 271, 277. Nor does it constitute anticipation and no defense to a claim for infringement, that one or more parts of a patented improvement may be found in one old patent or publication, and others in another and still others in a third. It is indispensable that all of them or their mechanical equivalents be found in the same description or machine, where they do substantially the same work by substantially the same means. *Bates v. Coe*, 98 U. S. 31, 48; *Imheuser v. Buerk*, 101 U. S. 647, 660; *Seabury v. Am. Ende*, 152 U. S. 561, 568; *Hobbs v. Beach*, 180 U. S. 383. And as "that which infringes if later, will anticipate if earlier", Bertram would not infringe on Smith for he omits every element of the claim except boards and the longitudinal opening.

(b) Turning to the File Wrapper (R. pp. 254 to 271) this claim (R. p. 263) was allowed and remained allowed at all times. The rejections of other claims had no limiting effect as to this Claim 1. Original Claims 1 to 4 (R. pp. 258, 259) were rejected as indefinite and as aggregatious, and the Examiner suggested amendment so as to confine them to a housing for covering or concealing the car having a laterally extending arm. (R. pp. 261, 262). Conformably to the suggestion, four new claims were presented (R. pp. 262, 263, 264). New Claim 2

(being Claim 1 of the Patent) was allowed. (R. pp. 266, 267). New Claims 1, 3, and 4 were rejected on Bertram (R. p. 266), cancelled (R. p. 267) and amended new claims 2 and 3 presented (R. p. 267). As thus amended, these new Claims 2 and 3 were allowed and Claim 2 (Claim 1 of Patent) again allowed. (R. p. 268).

Inserted amended Claims 1 and 4 rejected on Bertram, as in Bertram, made no provision different from Bertram for supporting any side of the housing (R. p. 356, Defendants' Exhibit No. 21, side folio 417-418); inserted or Amended Claim 3 broadly claimed "means for supporting" etc., whereas Bertram's means of support was integral in his cover by virtue of its size, or by his inverted L-shaped third rail functioning accidentally as a bracket. (See b, b^2, Fig. 1 of drawing, side folio 417-418 opposite R. p. 356). So that, on the cases cited in our discussion of File Wrapper of Patent 1,379,224, the estoppel as to allowed claims previously rejected on Bertram is, that Smith is estopped from maintaining that these amended claims as allowed, cover Bertram's combination, or from now claiming that these claims have the same breadth as the amended and rejected Claims 1, 3 and 4, namely, that the support of the side above the continuous opening is integral in the structure or by means of a bracket which, of course, has no truss function. Nowhere in Bertram is a truss function discernable or even suggested; nor is it pretended that the side of Respondents' housing above the continuous opening is supported as in Bertram, nor that Respondents are using Bertram's cover. *Griswold v. Harker*, 62 Fed. 389, 393 (C. C. A. 8); *Imperial Machine v. Blakeslee*, 262 Fed. 419, 423 (C. C. A. 2).

Point E.

Respondents have infringed Claim 1 of Patent No. 1,507,440.

(a) In letter and substance, Respondents' housing reads directly on this Claim (R. pp. 120, 122, 127, 128, 138, 139, 142, 143, 144, 145, 154, 155, 159, 168, 187. Plaintiff's Exhibit No. 5 side folio 177-178; Plaintiff's Exhibit No. 7, side folio 179-180; R. p. 180). The opinion below adopts the word "cleat" to designate the member which the claim designates a "truss rod", from which the Court concludes that respondents do not infringe. This wooden rod or "cleat" is attached to the closed or rear side of the housing and is adapted to support the side of the housing above the continuous opening by being fastened to an overhanging beam in continuation of the side above the continuous opening, denominated cantilever, and producing a triangular tie or truss—a cantilever truss. As the claim reads "truss rods adapted to support, etc." it comprises every kind of truss construction. *(Webster's New Int. Dict.* (Merriam Ed.) 1927, *verbo* Truss in Arch-Engin.). There is substantial identity of function, operation and result. *Sanitary Ref. Co. v. Winters*, 180 U. S. 30; *Smith v. American Electr. Rabbit, etc.*, 21 Fed. (2nd) 366, 372, 373, 374.

(b) In the Courts below, Respondents asserted an interpretation of Claim 1, contending that element 4 reading "a continuous opening in one side of said housing adapted to permit extension of the laterally extending arm

therethrough" should be read as an opening in the side wall as distinguished from a space between the side wall and the roof. Assuming, for the time being, that that construction is to be placed on plain language, nevertheless on the facts found by the Master, approved by the District Court (and not questioned by the Tenth Circuit Court of Appeals) Respondents' device falls within it. (See Masters Report R. pp. 89, 90, 91, 92; R. p. 116). On the other hand, the language rejects that interpretation, which would result in striking out an unambiguous clause, insert words not contained therein and thus, in effect, would make it easy to escape infringement by such an evasion as elevating or lowering the grade of rail tracks and course or the height and size of the conveyor car and continuous opening in the face of the specifications which read: "with the foregoing and other objects in view, my invention consists of the arrangement and combination of parts as hereinafter described and claimed; and while the invention is not restricted to the exact details of the construction disclosed herein, yet for the purpose of illustrating a particular embodiment thereof, reference is had to the accompanying drawings" (R. p. 179). For structures designed to evade the spirit of the invention and which contain all the elements of the claim are infringements. *Walker on Patents*, 6th Edition, Sec. 424, Vol. 1, p. 520. That rule is likewise applicable to Respondents' contention that they have avoided infringement in their support of the side above the continuous opening by using truss rods so assembled as to form a rigid frame work, whether cantilever truss or any other kind of truss, conformably to claim language.

Point F.

The decision below reversing the decree of the District Court is erroneous.

Reversal of the decree and dismissal of the bill by the Tenth Circuit Court of Appeals, operated an annulment of the judgment for $20,000.00 stipulated damages and a cancellation of the stipulated damage bond by the terms of the order withholding the temporary injunction (R. pp. 44, 45) and the condition of the bond. (R. p. 46). The opinion below goes further and finds, that in any event, the judgment and bond for such stipulated damages are void as serving a subterfuge for a judgment for gambling profits or concessions. (R. p. 415, *Magic City, etc., v. Smith*, 38 Fed. (2nd) 170, 175). There being no evidence to warrant it, nothing in the order or decree of the District Court to sanction it, confessedly, our faculty of perception is dissipated. The stipulation is limited to petitioner's damages, not to Respondents' profits. It covers her lost royalties and such other resulting damages. The matter of Respondents' profits derived from the use of the infringing device, is left open by the decree of the District Court for an accounting, and should it hereafter or at any time appear that Respondents are profiting by any illegal act of theirs, that is no concern to petitioner; it is outside the stipulation, outside the relief prayed for.

It is respectfully submitted that the decision and decree of the Tenth Circuit Court of Appeals be reversed.

E. HOWARD M'CALEB,
Counsel for Hannah M. Smith,
Administratrix, Petitioner.

FILE COPY

No. 77.

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In the Supreme Court of the United States

October Term, 1930.

HANNAH M. SMITH, Administratrix of Estate of Owen P. Smith, Deceased, *Petitioner*,

vs.

MAGIC CITY KENNEL CLUB, INC., and JOHN J. SHAUGHNESSY, *Respondents*.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

BRIEF ON BEHALF OF RESPONDENTS.

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A patentee cannot claim equivalency based on an element which he has been required to abandon in order to secure his patent.

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On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

BRIEF ON BEHALF OF RESPONDENTS.

STATEMENT OF THE CASE.

Litigation over the two patents here involved originated in the District Court for the Southern District of Louisiana, in the case of *Smith* v. *American Electric Rabbit Racing Assn., Inc., et al.*, where the patents were

held valid and infringed by the devices there involved (21 Fed. Rep. [2d] 366). On appeal to the United States Circuit Court of Appeals for the Fifth Circuit the decision of the District Court was affirmed without written opinion (26 Fed. Rep. [2d] 1016).

The same patents have also been before the United States District Court for the Eastern District of Missouri, where the decision of the District Court for the Southern District of Louisiana was followed without attempt at analysis of the patents (Record, p. 400), and in the United States District Court for the Southern District of Ohio, where Judge Hickenlooper, now Circuit Judge, disagreed with Judge Burns of the United States District Court for the Southern District of Louisiana, and held that devices alleged to be similar to those involved in the earlier case did not infringe the patents (*Smith* v. *Springdale Amusement Park, Ltd., et al.*, 30 Fed. Rep. [2d] 92), which decision was affirmed by the United States Circuit Court of Appeals for the Sixth Circuit (40 Fed. Rep. [2d] 173); writ of certiorari being granted by the Supreme Court of the United States on October 13, 1930 (Supreme Court Advance Opinions, 1930-1931, 75 L. ed. p. 9).

The same patents were again involved in the present suit of *Smith* v. *Magic City Kennel Club, Inc., et al.* brought in the United States District Court for the Western District of Oklahoma, where the special master appointed by the court followed the decision of Judge Burns in the United States District Court for the Southern District of Louisiana; the findings and conclusions of the special master being confirmed by District Judge Kennamer without written opinion, and over exceptions by the defendants. On appeal to the United States Circuit Court of Appeals for the Tenth Circuit the decree of the trial

court was reversed (38 Fed. Rep. [2d] 170), and the cause is presented here on certiorari to the United States Circuit Court of Appeals for the Tenth Circuit on the grounds of conflict of its decision with that of the Circuit Court of Appeals of the Third Circuit.

The defenses in the present case are:

(1) Invalidity of both patents here involved, if given a construction sufficiently broad to include defendants' alleged infringing structure. (Record, pp. 95, 99, 100, 472, 491, 495.)

(2) Non-infringement. (Record, pp. 96, 100, 472, 473.)

(3) That the stipulated damage bond given in lieu of preliminary injunction should be discharged, and the order granting the injunction vacated, because the evidence on which the order was granted was not of the character that the law requires to induce award of such extraordinary remedy. (Record, pp. 105, 474.)

POINTS AND AUTHORITIES.

Point I.

The claim of a patent is a statutory requirement prescribed for the very purpose of making the patentee define precisely what his invention is, "not only to secure to him all to which he is entitled, but to apprise the public of what is still open to them."

I. T. S. Rubber Co. v. Essex Rubber Co., 272 U. S. 429, 444, 71 L. ed. 335, 47 Sup. Ct. Rep. 136.
Weber Electric Co. v. Freeman Electric Co., 256 U. S. 668, 677, 678, 65 L. ed. 1162, 41 Sup. Ct. Rep. 600.
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Howe Machine Co. v. National Needle Co., 134 U. S. 394, 33 L. ed. 967, 10 Sup. Ct. Rep. 570.
White v. Dunbar, 119 U. S. 47, 30 L. ed. 303, 305, 7 Sup. Ct. Rep. 72.
Bates v. Coe, 98 U. S. 31, 25 L. ed. 68, 71.

Point II.

Limitations in the claims of a patent, particularly if introduced by the inventor to overcome rejection of his application for the patent, must be strictly construed against the inventor and in favor of the public.

Hubbell v. United States, 179 U. S. 77, 80, 45 L. ed. 95, 21 Sup. Ct. Rep. 24.
Morgan Envelope Co. v. Albany Perforated Wrapping Paper Company, 152 U. S. 425, 429, 38 L. ed. 500, 14 Sup. Ct. Rep. 627.
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Corbin Cabinet Lock Co. v. *Eagle Lock Co.*, 150 U. S. 38, 40, 37 L. ed. 989, 14 Sup. Ct. Rep. 28.
Shepard v. *Carrigan*, 116 U. S. 593, 29 L. ed. 723, 724, 6 Sup. Ct. Rep. 493.

Point III.

A patentee cannot claim equivalency based on an element which he has been required to abandon in order to secure his patent.

I. T. S. Rubber Co. v. *Essex Rubber Co.*, 272 U. S. 429, 443, 444, 71 L. ed. 335, 47 Sup. Ct. Rep. 136.
Weber Electric Co. v. *Freeman Electric Co.*, 256 U. S. 668, 677, 678, 65 L. ed. 1162, 41 Sup. Ct. Rep. 600.

Point IV.

Omission of a single element of the claim of a patent avoids infringement.

Signal Co. v. *Signal Co.*, 114 U. S. 87, 29 L. ed. 96, 98, 99, 5 Sup. Ct. Rep. 1069.
Fay v. *Cordesman*, 109 U. S. 408, 421, 27 L. ed. 979, 982, 984, 3 Sup. Ct. Rep. 236.
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Ciniotti Unhairing Co. v. *American Fur Refining Co.*, 198 U. S. 399, 410, 49 L. ed. 1100, 25 Sup. Ct. Rep. 697.

Point V.

An order granting preliminary injunction on evidence which is not of the character that the law requires to induce award of such extraordinary remedy should be vacated and a bond given in lieu of such injunction should be discharged.

Ironclad Mfg. Co. v. *Sugar Loaf Dairy Co. et al.*, 140 Fed. Rep. 108, 109.

Republic Electric Co., Inc., et al. v. *General Electric Co.*, (C. C. A. 3d Cir.) 27 Fed. Rep. (2d) 595, 597.

SUMMARY OF ARGUMENT.

As to Patent No. 1379224.

Respondents contend that, as hereinafter explained, Patent No. 1379224 is, by the prior art, restricted to a very narrow range, and the claims thereof, by voluntary action of the patentee and requirements of the Patent Office, limited to specific structure and combination of elements not found in defendants' alleged infringing device; particularly that the hinged mounting and supporting wheel elements of the lure carrying arm of the patent are not merely accessorial, but distinguishing, characteristics of the patented structure and material elements of the claims essential to patentability and material to operation of the patented structure; that by employing a rigidly mounted lure carrying arm having no ground support at its free end, defendants' apparatus differs from that claimed in the patent in structure, mode of operation and result, and consequently does not infringe the patent. Further, that the patentee's location of his conveyer housing at the outer side of the race course is, because of the nature of the patented structure, a material limitation in claim 1 of the patent, which differentiates such structure from that employed by the defendants.

As to Patent No. 1507440.

Respondents also contend that, as hereinafter explained, Patent No. 1507440 is, by the prior art, restricted to a very narrow range, and the claims thereof, by voluntary action of the patentee and requirements of the Patent Office, limited to specific structure and combi-

nation of elements not found in defendants' alleged infringing device, and that the patentee having been restricted to such details of structure and combination of elements in order to secure his patent, could not thereafter expand the claims to include defendants' different structure and combination of elements.

As to the Stipulated Damage Bond.

The order for preliminary injunction for which the stipulated damage bond was substituted, having been granted on misrepresentation to the court of the scope and letter of the claims, should be set aside and the bond discharged.

RESPONDENTS' BRIEF AND ARGUMENT REGARDING PATENT No. 1379224.

When Mr. Smith filed his application resulting in Patent No. 1379224, he made, among others, the following claims (File Wrapper and Contents of Patent No. 1379224, defendants' Exhibit No. 5, Record, p. 237):

> "3. In an amusement, the combination of a race track suited for dogs, a covered rail track adjacent said course, a conveyor car mechanically operated upon said track, an arm attached to said car extending midway of said course, a wheel rotatably mounted on said arm, and a lure mounted on said arm.
>
> 4. In an amusement, the combination of a race course suited for dogs, a covered rail track adjacent said course on one side, a conveyor car mechanically operated upon said track, a horizontally extending arm hinged to said car extending midway of said course, a wheel rotatably mounted near the end of said arm, and resting upon the ground, a platform supported by said arm, and a lure or quarry mounted upon said platform for attracting the dogs."

Comparison of claim 4 with claim 3 discloses that one differs from the other only in that claim 4 includes additional limitations not found in claim 3.

Claim 4 with the additional limitations not found in claim 3 italicized reads as follows:

> "In an amusement, the combination of a race course suited for dogs, a covered rail track adjacent said course on one side, a conveyor car mechanically operated upon said track, a *horizontally extending* arm *hinged* to said car extending midway of said course, a wheel rotatably mounted *near the end of* said arm *and resting upon the ground, a platform supported by said arm*, and a lure or quarry mounted upon said platform for attracting the dogs."

Claim 3 was, by the Examiner in the Patent Office (Record, p. 241), rejected on the prior patent to Walsh No. 611876, of October 4, 1898 (Defendants' Exhibit No. 9; Record, p. 325).

Claim 4 was allowed as originally presented (Record, p. 241).

Mr. Smith did not contest the rejection of original claim 3 but attempted to avoid anticipation by the prior patents by amending the claim to include reference to the opening for the lure arm (Record, p. 243), his amendment consisting of elimination of the word "covered" before "rail track" and addition of the following wording at the end of the claim:

> "And a casing extending around the race course and receiving and concealing the track and the conveyor car and provided with a longitudinal opening through which the said arm extends."

He argued that with such limitation to the casing for concealing the mechanical conveyer, the claim distinguished his structure from that of the patent to Walsh (Record, pp. 244-245).

The Examiner adhered to his rejection, holding (Record, p. 247):

> "Claims 1, 2 and 3 are rejected on either Walsh or Moss both of record. Moss is provided with a housing and it would not be invention to provide Walsh with one."

Thereupon, and without further contest, Mr. Smith cancelled the rejected claim and substituted what is now claim 1 of the patent for it (Record, p. 248).

Comparison of rejected and cancelled claim 3 with claim 1 of the patent in parallel columns shows that, except for arrangement of corresponding elements, one

is identical with the other except for certain limitations in claim 1, indicated by italics, to-wit:

Rejected and Canceled Claim 3.	Claim 1 of Patent.
In an amusement, the combination of,	In a dog racing amusement,
(a) a race track suited for dogs,	(a) a course suited for dogs,
(g) a casing extending around the race course,	(b) a casing extending around *the outer side of* the race course,
(g1) and concealing the track and the conveyer car,	
(g2) and provided with a longitudinal opening,	(b1) and provided with a longitudinal opening,
(g3) through which said arm extends,	
(b) a rail track adjacent said course,	(c) a mechanical conveyer including a track *extending around* the race course and located within the casing,
(c) a conveyer car mechanically operated upon said track,	(c1) a conveyer car mechanically operated upon said track,
(d) an arm attached to said car,	(c2) and provided with an arm extending through the longitudinal opening of the casing in a projecting position over the track,
(d1) extending midway of said course,	
(f) a lure mounted on said arm,	(c3) and adapted to carry a lure,
(e) a wheel rotatably mounted on said arm.	(d) and a wheel rotatably mounted on
	(d1) *and supporting the arm*
	(d2) *at the projecting end thereof.*

The differences between rejected and canceled claim 3 and claim 1 of the patent are that claim 1 of the patent includes the following limitations not found in rejected and canceled claim 3:

(a) Limitation to location of the casing at "the outer side of" the race course.

(b) Limitation to extension of the conveyer track "around" the race course.

(c) Limitation of the wheel to "supporting the arm."

(d) Limitation of location of the wheel "at the projecting end" of the arm.

Limitation of the casing at the outer side of the race course is material for the reason that with the casing located at the outer side of the race course, the conveyer car could be switched or "disappeared into the den" without decreasing its speed; a result which could obviously not be accomplished with the car running at the inside of the course. It was evidently intended to thereby differentiate this claim from claim 2 of the patent which does not definitely locate the casing at either side of the course.

Limitation to extension of the conveyer track entirely around the race course is not material and has not been urged because this description corresponds in substance with that of the corresponding element of the rejected claim.

The real, vital limitation whereby claim 1 is differentiated from the rejected one and the patented structure distinguished from the prior art is in specification of the wheel as "supporting the arm"—"at the projecting end of the arm." Both such qualifications of the wheel distinguish claim 1 from 3 and the patented structure from the prior art in substance as well as terms.

Mr. Keen, who had worked with Mr. Smith, the patentee, in construction and operation of dog race tracks employing the patented equipment, called as an expert witness for the plaintiff, testified (Record, p. 115) that the plaintiff had used a lure carrying arm without the supporting wheel and that vibration of the arm caused the arm to break; that the supporting wheel takes care of up and down movement of the arm; that it eliminates vibration and that the wheel supported arm is the better construction. This witness admitted that respondents did not use a wheel; that there is no support for the outer end of respondents' arm and that respondents' arm has the vibration which the patentee sought to avoid by use of the supporting wheel (Record, pp. 115, 116).

Mr Shaughnessy, the designer and patentee of respondents' apparatus, testified (Record, pp. 144, 147) that he purposely omitted all support, and particularly a supporting wheel, from the end of his lure arm in order to eliminate the function for which it is provided in the patented structure, i. e., support of the arm from the track, and that he omitted such support in order to secure a result which the patentee sought to avoid by use of the wheel, i. e., vibration of the arm.

Mr. Shaughnessy testified (Record, p. 151) that a wheel or like support on the end of the arm would interfere with retraction of the rabbit through the slot into the housing to "disappear" the rabbit at the end of the race as practiced by respondents (but not by petitioner), and support of the outer end of the arm on the wheel would prevent the vibration which respondents desire in order to better simulate a live lure, but which petitioner wishes to avoid because of breakage of the arm.

The two structures thus lack identity of structure, mode of operation, and result.

The arm of the patent is hinged to the conveyer car and the outer end of the arm would drag on the track unless supported by the wheel. The function of the wheel is to support the arm off of the track and prevent the vibration which the patentee found would cause the arm to break.

The patentee having limited his claims to the combination including the supporting wheel and the hinged construction of the lure supporting arm with the conveyer car, cannot now say that the limitation is immaterial.

I. T. S. Rubber Co. v. Essex Rubber Co., 272 U. S. 429, 443, 444, 71 L. ed. 335, 47 Sup. Ct. Rep. 136.

Weber Electric Co. v. Freeman Electric Co., 256 U. S. 668, 677, 678, 65 L. ed. 1162, 41 Sup. Ct. Rep. 600.

McClain v. Ortmayer, 141 U. S. 419, 35 L. ed. 800, 802, 12 Sup. Ct. Rep. 76.

Hoxie Machine Co. v. National Needle Co., 134 U. S. 394, 33 L. ed. 967, 10 Sup. Ct. Rep. 570.

White v. Dunbar, 119 U. S. 47, 30 L. ed. 303, 305, 7 Sup. Ct. Rep. 72.

Bates v. Coe, 98 U. S. 31, 25 L. ed. 68, 71.

Hubbell v. United States, 179 U. S. 77, 80, 45 L. ed. 95, 21 Sup. Ct. Rep. 24.

Morgan Envelope Co. v. Albany Perforated Wrapping Paper Company, 152 U. S. 425, 429, 38 L. ed. 500, 14 Sup. Ct. Rep. 627.

Knapp v. Morse, 150 U. S. 221, 224, 225, 37 L. ed. 1059, 14 Sup. Ct. Rep. 81.

Corbin Cabinet Lock Co. v. Eagle Lock Co., 150 U. S. 38, 40, 37 L. ed. 989, 14 Sup. Ct. Rep. 28

Shepard v. Carrigan, 116 U. S. 593, 29 L. ed. 723, 724, 6 Sup. Ct. Rep. 493.

Respondents' arm is rigidly supported on the car and needs no support at its outer end. Respondents did not omit the wheel for the purpose of avoiding the patent. They would not have used the wheel if they could, because their arm operated on a different principle and use of the wheel would not have permitted them to secure an advantage which they desired.

Even if the wheel could be held the equivalent of the rigid support of the patent, there could be no infringement because the claim specifies that the wheel is located at the projecting end of the arm. As respondents used no supporting or carrying element of any kind at the projecting end of the arm, they had nothing to match with the wheel for finding equivalency.

Petitioner has urged that the respondents' rigid arm support is the equivalent of the hinged support of the patent, because each connects the arm with the car, but this would leave the wheel of the patent without a corresponding element in respondents' structure. The wheel on the outer end of the arm, made an element of claim 1 of the patent, is a separate element for performing a definite function. As both the element and function are absent from respondents' structure there can be no infringement. To hold otherwise would be to give to claim 1 of the patent the same scope as the rejected and canceled claim 3. The courts have repeatedly held that a claim cannot be so construed in order to find infringement, but that the patentee, having limited his claim, is bound by it and omission of the limiting element avoids infringement.

Signal Co. v. Signal Co., 114 U. S. 87, 29 L. ed. 96, 98, 99, 5 Sup. Ct. Rep. 1069.

Fay v. Cordesman, 109 U. S. 408, 421, 27 L. ed. 979, 982, 984, 3 Sup. Ct. Rep. 236.

McClain v. *Ortmayer*, 141 U. S. 419, 425, 35 L. ed. 800, 802, 12 Sup. Ct. Rep. 76.
Wright v. *Yuengling*, 155 U. S. 47, 52, 39 L. ed. 64, 15 Sup. Ct. Rep. 1.
Hubbell v. *United States*, 179 U. S. 77, 80, 82, 45 L. ed. 95, 21 Sup. Ct. Rep. 24.
Cimiotti Unhairing Co. v. *American Fur Refining Co.*, 198 U. S. 399, 410, 49 L. ed. 1100, 25 Sup. Ct. Rep. 697.

Claim 2 of patent No. 1379224 contains even more specific limitation to detail of mounting and support of the lure arm than does claim 1, in that it specifies that the arm is "*hinged*" to the car and that the wheel is mounted "*near the end*" of said arm, and *resting upon the ground*.

Petitioner's principal and expert witness, Mr. Keen, testified (Record, pp. 111, 115, 116) that respondents' arm is *not* hinged and does *not* have a wheel mounted near the end of the arm and resting on the ground. This testimony was corroborated by Mr. Shaughnessy, one of the respondents (Record, pp. 144, 147, 151).

The hinge mounting, like the wheel support of the patent, has a function to perform that is neither required nor desired with respondents' structure. If a wheel supported arm were rigidly mounted it would be broken upon impact of the wheel with an obstruction on the track. A hingedly mounted arm must be supported at its outer end or it will drag on the track. Each of the two elements is necessary on account of the other, but if either is absent (as in respondents' structure) then the other is not required. Respondents' arm, involving a different principle and having a different mode of operation, does not require, nor is it provided with either the

hinge or the wheel (nor any equivalents of them) made essential elements of claim 2 of the patent.

Having limited the claims of patent No. 1379224 to the wheel support and hinge mounting of his lure arm, in order to secure the patent, the patentee, nor his successors, cannot now say that such limitations are immaterial, nor that respondents' structure, omitting such elements, is an infringement of the claims. If broadened to include respondents' structure, the claims are anticipated by the prior art cited by the Examiner in the Patent Office and invalid; if restricted as the patentee intended them to be when securing the patent, they are not infringed.

RESPONDENTS' BRIEF AND ARGUMENT REGARDING PATENT No. 1507440.

When Mr. Smith made his application which resulted in patent No. 1507440, he originally included claims for the housing, all of which were rejected as informal and without any action on the merits (File Wrapper and Contents of Patent No. 1507440; Defendants' Exhibit No. 6; Record, p. 276).

Mr. Smith thereupon canceled the claims and substituted others, among which the following were included (Record, pp. 278, 279):

> "2. In a housing for covering tracks and cars having laterally extending arm operated upon said track, the combination of posts set in the ground at the sides of said track, timbers attached to said posts to form a frame, the boards attached to said timbers and posts to form a continuous enclosure above said track, and having a continuous opening in one side of said housing adapted to permit extension of the laterally extending arm therethrough, and truss rods attached to the closed side of the housing adapted to support the side of said housing above the said continuous opening.
>
> 3. In a housing to cover a track and conveyor car having a laterally extending arm, the combination of posts set in the ground at either side of said track to support a frame work, timbers attached to said posts to form a frame, boards attached to said timbers and frame to form a continuous housing having a continuous opening therein, provided to permit operation of the laterally extending arm aforesaid and means for supporting the roof and side of the housing above said continuous opening aforesaid."

The claim numbered 2 was allowed and now appears as claim 1 of the patent. Claim 3 was (Record, p. 282)

rejected on the patent to Bertram No. 729120 of May 26, 1903 (Defendants' Exhibit No. 21; Record, p. 417).

Without contesting the rejection Mr. Smith canceled claim 3 and all of the other rejected claims, substituting two additional claims, now appearing as claims 2 and 3 of patent No. 1507440 (Record, p. 284). The application was thereupon allowed.

The rejected and canceled claim 3 was substantially identical with claim 2 allowed and now appearing in the patent as claim No. 1, except for certain limitations in the allowed claim, indicated by italics as follows:

> "1: In a housing for covering tracks and cars having laterally extending arm operated upon said track, the combination of posts set in the ground at the sides of said track, timbers attached to said posts to form a frame, and boards attached to said timbers and posts to form a continuous enclosure above said track, and having a continuous opening *in one side of said housing* adapted to permit extension of the laterally extending arm therethrough, and *truss rods attached to the closed side of the housing* adapted to support the side of said housing above the said continuous opening."

The rejected and canceled claim 3 included reference to support of the roof of the housing not found in claim 1. Consequently the only difference between the rejected and canceled claim 3 and the allowed claim 1 appearing in the patent is that in the allowed claim reference to the roof is omitted and the opening definitely fixed in the side of the housing, and that while the rejected and canceled claim designated the support for the closed side of the housing by the general term "means," allowed claim 1 specified a particular kind of supporting means, i. e., truss rods, and that such rods are attached to the closed side of the housing.

The rejected and canceled claim 3 and the allowed claim 1 separated into their elements appear as follows in parallel columns:

Rejected and Canceled Claim 3.	Claim 1 of Patent.
In a housing to cover a track and a conveyer car having a laterally extending arm, the combination of,	In a housing for covering tracks and cars having laterally extending arm operated upon said track, the combination of
(a) posts set in the ground	(a) posts set in the ground
(a1) at either side of said track,	(a1) at the sides of said track,
(a1a) to support a framework,	
(b) timbers attached to said posts,	(b) timbers attached to said posts,
(b1) to form a frame,	(b1) to form a frame,
(c) boards attached to said timbers and frame,	(c) boards attached to said timbers and posts,
(c1) to form a continuous housing,	(c1) to form a continuous enclosure above said track,
(c2) having a continuous opening therein,	(c2) and having a continuous opening,
	(c2a) in one side of said housing,
(c2a1) provided to permit operation of the laterally extending arm aforesaid,	(c2a1) adapted to permit extension of the lateral extending arm therethrough,
(d) means,	(d) truss rods,
	(d1) attached to the closed side of the housing,
(d2) for supporting the roof and side of the housing above said continuous opening aforesaid.	(d2) adapted to support the side of said housing above the said continuous opening.

Comparison of the two claims discloses that they differ only in that the patented claim is limited to support of the side only of the housing, that the opening is definitely located in the side of the housing, and that the supporting means is limited to a particular structure.

The Examiner in the Patent Office found in effect that the combination recited in the rejected claim 3 was disclosed in the prior patent to Bertram and consequently not allowable to Mr. Smith, but that in the prior patent to Bertram the means for supporting the side of the housing did not consist of *truss rods* attached to the *closed side* of the housing, and consequently the claim could be allowable if limited to such specific supporting means. It follows, therefore, that unless respondents' structure includes an opening in the side of the housing, as distinguished from a mere opening between the side and the roof, and unless respondents use the specific supporting means recited in the claim, there could be no infringement.

This is not a case where the doctrine of equivalents can be applied. If the rejected and canceled claim 3 had been allowed, then a form of supporting means different from the truss rods might constitute an equivalent of such specific means, but even if respondents had a part of the side of their housing supported above the opening but employed means other than truss rods for the support, then there could be no infringement.

Signal Co. v. *Signal Co.*, 114 U. S. 87, 29 L. ed. 90, 98, 99, 5 Sup. Ct. Rep. 1069.

Fay v. *Cordesman*, 109 U. S. 408, 421, 27 L. ed. 979, 982, 984, 3 Sup. Ct. Rep. 236.

McClain v. *Ortmayer*, 141 U. S. 419, 423, 35 L. ed. 800, 802, 12 Sup. Ct. Rep. 76.

Wright v. *Yuengling*, 155 U. S. 47, 52, 39 L. ed. 64, 15 Sup. Ct. Rep. 1.

Hubbell v. *United States*, 179 U. S. 77, 80, 82, 45 L. ed. 95, 21 Sup. Ct. Rep. 24.

Cimiotti Unhairing Co. v. *American Fur Refining Co.*, 198 U. S. 399, 410, 49 L. ed. 1100, 25 Sup. Ct. Rep. 697.

Respondents, however, not only do not employ truss rods for supporting any part of their housing, but do not have an opening in the side of the housing (Defendants' Exhibit No. 30; Record, p. 465). In respondents' structure the side of the housing facing the race course is continuous and not interrupted by an opening (Plaintiff's Exhibit No. 5; Record, p. 177). The roof of respondents' structure extends over the inner side of the housing and is spaced therefrom, providing an opening for the lure arm between the housing side and roof, but the opening is not in the side of the housing. Respondents' roof has cantilever support. No truss rods are employed. If the cantilever is an equivalent of the truss rod support of the patented structure, then the claim is anticipated and invalid for the reason that such a cantilever is old in the art, having been employed for many years for supporting roofs just as it is employed by respondents for supporting the roof of their conveyor housing. This is conceded by petitioner's expert witness, Mr. Keen (Record, p. 117), and by petitioner's expert witness, Mr. Gittinger (Record, pp. 126, 127). At the hearing petitioner's expert, Mr. Keen, drew a sketch (Plaintiff's Exhibit No. 5; Record, p. 177) to illustrate his understanding of respondents' structure, showing the roof extending over the inner side of the housing, but not having any downward projection in alignment with the side of the housing to form an opening for the lure arm.

Mr. Gittinger also made a drawing (Plaintiff's Exhibit No. 7; Record, p. 179) to illustrate *his* understanding of respondents' structure, which differed from Mr. Keen's sketch, in that it showed a downward extension on the roof, spaced from the lower portion of the housing to form the arm opening. Neither Mr. Keen nor Mr. Gittinger would testify positively as to which drawing was correct, both qualifying their answers by the statement that their drawings showed respondents' structure *if they could remember correctly* (Record, pp. 112, 118, 131). The witness Gittinger nullified his testimony regarding the housing, however, by his statement that his drawing was not intended to accurately represent respondents' structure, but was submitted only as a typical section (Record, p. 131).

This evidence is not sufficient to support a finding of infringement, particularly in view of the fact that the testimony was given several months after the witnesses had seen respondents' structure and that their inspection of it had been hurried.

Doubt as to the actual construction of respondents' housing is, however, eliminated by the photographs submitted by the respondents (Defendants' Exhibits No. 30 and 31; Record, pp. 405, 407), which show clearly that respondents' structure does not include an opening or slot in the side of the housing and that the roof of respondents' housing is supported by cantilevers and not by truss rods.

Here, as in connection with patent No. 1379224, the difference between respondents' structure and that defined in the claim of the patent is a matter of substance—not merely of form or wording.

The housing of the patent in suit is constructed and adapted for location at the *outside* of the track so that

it is not necessary for spectators to look over the housing to view the dogs during a race, and therefore, the housing may be of greater height than if located at the inside of the course so that spectators would be required to view the race over the housing.

Respondents' housing is located at the inside of the course and must be much lower than the outside housing. In order to avoid obstruction of view the roof of respondents' housing is set in a trench and the inner side, i. e., the side next to the race course, extends only a few inches above the ground. The roof of respondents' housing is flat and supported by cantilevers. Consequently, there is no projection of posts or other equipment above the roof. The roof of respondents' housing terminates above and in spaced relation to the upper edge of the inner side of the housing, thereby providing space through which the lure arm may project. It is not necessary, with respondents' construction, to provide a downwardly extending side portion over the upwardly extending side, as in the patented structure, whereas, if no such downward projection were employed in the patented structure there would be an opening of substantial width between the roof and side of the housing through which the dogs could view the conveyor car, and through which they might possibly enter the housing and be injured, and also through which rain or snow might enter the housing to detriment of the track and equipment.

In view of such differences in substance, respondents' different structure could not be considered the equivalent of that defined in the claim of the patent even if it were proper to apply the doctrine of equivalents in interpreting the claim. It is again submitted, however, that as the only novelty supporting allowance of the claim was in the specific location of the opening or slot and in the

specific construction of the supporting means, expansion of the claim to include equivalents would give the claim the scope of the rejected and canceled claim 3 and the claim would be anticipated by the patent to Bertram upon which the canceled claim 3 was rejected. It is repeated that the courts will not permit restoration of a claim to the scope of a rejected and canceled claim.

I. T. S. Rubber Co. v. Essex Rubber Co., 272 U. S. 429, 443, 444, 71 L. ed. 335, 47 Sup. Ct. Rep. 130.

Weber Electric Co. v. Freeman Electric Co., 256 U. S. 668, 677, 678, 65 L. ed. 1162, 41 Sup. Ct. Rep. 600.

McClain v. Ortmayer, 141 U. S. 419, 35 L. ed. 800, 802, 12 Sup. Ct. Rep. 76.

Howe Machine Co. v. National Needle Co., 134 U. S. 394, 33 L. ed. 967, 10 Sup. Ct. Rep. 570.

White v. Dunbar, 119 U. S. 47, 30 L. ed. 303, 305, 7 Sup. Ct. Rep. 72.

Bates v. Coe, 98 U. S. 31, 25 L. ed. 68, 71.

Hubbell v. United States, 179 U. S. 77, 80, 45 L. ed. 95, 21 Sup. Ct. Rep. 24.

Morgan Envelope Co. v. Albany Perforated Wrapping Paper Company, 152 U. S. 425, 429, 38 L. ed. 500, 14 Sup. Ct. Rep. 627.

Knapp v. Morse, 150 U. S. 221, 224, 225, 37 L. ed. 1059, 14 Sup. Ct. Rep. 81.

Corbin Cabinet Lock Co. v. Eagle Lock Co., 150 U. S. 38, 40, 37 L. ed. 989, 14 Sup. Ct. Rep. 28.

Shepard v. Carrigan, 116 U. S. 593, 29 L. ed. 723, 724, 6 Sup. Ct. Rep. 493.

Claims 2 and 3 of patent No. 1507440 follow claim 1 except for more specific limitation to the structure of the supporting means, claim 2 specifying that such supporting means consist of *adjustable* stay-rods connecting the upper ends of the posts to support the inner side

wall of the frame and that the continuous opening is in *one side* of the housing. As respondents' structure does not include the posts referred to in the claim and does not employ adjustable stay-rods for connecting the upper ends of posts to support an inner side wall, or for any other purpose, they do not infringe claim 2.

Claim 3 recites posts on each side of the housing, the posts on the inner side of the housing being of less height than those at the outer side, with screw-threaded, adjustable stay-rods secured to the upper ends of the outer posts and supporting the inner posts therefrom. Respondents' structure has no such posts and no such stay-rods.

Having limited the claims of patent No. 1507440 to the continuous opening in the side of the housing, and to the adjustable stay-rods for supporting the inner side wall of the housing, in order to secure the patent, the patentee, nor his successors, cannot now say that such limitations are immaterial, nor that the respondents' structure, omitting such elements, is an infringement of the claims. If broadened to include respondents' structure, the claims are anticipated by the prior art cited by the Examiner in the Patent Office and invalid; if restricted as the patentee intended them to be when securing the patent, they are not infringed.

RESPONDENTS' BRIEF AND ARGUMENT ON THE MOTION TO VACATE ORDER REQUIRING BOND IN LIEU OF PRELIMINARY INJUNCTION.

In asserting error by the trial court in overruling respondents' motion to discharge and vacate the order referred to, respondents do not say that the court erred merely by first granting the preliminary injunction and then substituting a bond in lieu of the injunction on the state of facts recited by the petitioner in the affidavits accompanying the motion for injunction.

If the facts in the case were as stated in the affidavits referred to, then the injunction may properly have been granted, but if such affidavits were not truthful and did not present the case fairly to the court, but on the other hand misquoted claims of the patents in suit, represented that a patent in suit had been adjudicated when there had been no adjudication of it, and withheld from the court facts essential to proper determination of the motion, then petitioner's prayer for the extraordinary remedy should have been denied, and since granted, the order made under such misapprehension of the actual facts of the case should have been discharged.

Particularly should this have been done in view of the nature of the bond. The bond required was not an ordinary injunction bond to insure recovery of damages which might be awarded to the plaintiff should the court find infringement of the patents in suit. It was a bond for a certain amount to be paid by respondents as liquidated damages should petitioner succeed in showing infringement of any single claim of any of the five patents originally involved in the suit.

In order for the petitioner to recover the full amount of the bond it was not necessary to prove infringement of all of the five patents in suit. All that the order required of the petitioner was to prove infringement of *any* of the claims of *any* of the patents.

Even should some of the patents be declared invalid and others not infringed, but the court find a single one of the claims of any one of the five patents to be infringed, petitioner could demand the full amount of the bond.

The unfairness of such an arrangement is apparent in view of the usual practice of apportionment of damages between the several patents in suits where more than one is involved and the apportionment of damages according to the actual infringement in cases where even but one patent is involved.

Infringement of a patent must and can only be determined by comparison of the alleged infringing structure with the claims of the patent, and it is elementary that (Walker on Patents, 5th Edition, Sec. 676, p. 761):

> "Infringement or danger of infringement by the defendant must be clearly proved by a complainant in order to entitle him to a preliminary injunction."

(Also pp. 762-763):

> "Proof of infringement cannot be made by affidavits which merely state that conclusion of fact. The complainant must prove the specific character of the defendant's doings. Upon the evidence the court will examine and decide the question of infringement in the light of whatever expert testimony the case may contain, and in the light of whatever construction of the patent it finds on examination to be just; and that construction will

> generally be guided and governed by the construction which was given to the patent in the adjudicated case upon which the special presumption of validity is based, and where the facts are substantially the same in the two cases, the former decision will be followed. But where the question of infringement depends on a new and enlarged construction of the patent, a preliminary injunction will be denied. And, if the court is unable to arrive at a conclusion without the aid of further evidence, it will decline to grant the injunction till that evidence is supplied; though it may require the defendant to give bonds and to keep an account of his doings which are alleged to infringe; and the court will not grant a preliminary injunction where the question whether the defendant's doings constitute an infringement of the complainant's patent is a doubtful question."

In his affidavit Mr. Keen, one of petitioner's experts, adopting the language of the claims of patent No. 1379224 in suit, said (Record, p. 35):

> "I further state that I have carefully observed and testify that there is in use at the dog racing amusement, at the said Magic City Kennel Club, a race course suited for dogs, a casing extending around the inner side of the race course and provided with a longitudinal opening, a mechanical conveyor including a track extending around the race course and located within the casing, a conveyor car mechanically operated upon said track and provided with an arm rigidly supported at its inner end and to the car and extending through the longitudinal opening of the casing in a projecting position over the track, a platform supported by said arm and a lure in the form of a stuffed rabbit mounted upon said arm and said platform at its outer end."

To support petitioner's allegation of infringement of patent No. 1507440 in suit, Mr. Keen said in his affidavit (Record, p. 37):

> "Regarding patent No. 1507440, the housing used by defendants at Magic City Kennel Club and that called for in claim No. 1 of that patent are identical. The housing used at the Magic City Kennel Club is an exact copy of that claim. The object and purpose of the truss rods called for in the claim and used at the Magic City Kennel Club are the same. This truss rod is a member of a truss, that is to say, an assemblage of members combined to form a rigid frame work. The strain on the members are that of tension and compression and the truss rod is used for sustaining the side of the housing above the continuous opening, that is to say, the roof. The truss rods called for in the patent and used at the Magic City Kennel Club housing, serve to prevent deflection or sagging of the beam or roof of the housing.

Here no definite comparison between the respondents' structure and that of the claim is made and only the affiant's conclusion of equivalency between respondents' structure and that of the claim is stated. The affiant arbitrarily referred to respondents' braces as "truss rods" without explanation of differences in structure that may have existed or reference to limitation imposed on the term employed by the patentee in the claim.

While respondents were charged with infringement of all of the three claims of patent No. 1507440, there is no reference made in Mr. Keen's affidavit to either of claims 2 or 3; no attempt was made to distinguish either of these claims from claim 1 and no attempt whatever was made to show that respondents infringed either of these claims.

Attention is called to the fact that while claim 1 of patent No. 1507440 (Record, pp. 167, 169) calls for "truss rods" and Mr. Keen in his affidavit pretended to find "truss rods" in respondents' structure; claim 2 calls for "adjustable stay rods," and claim 3 for "screw-threaded adjustable stay rods," and that in both of these claims such elements are specifically located in a particular relation to other parts of the structure.

There was, however, no effort made by Mr. Keen to show that such elements were present in respondents' structure, and consequently, no proof was made of infringement of these claims by the respondents.

While petitioner's proofs for supporting the allegation of infringement of patents Nos. 1379224 and 1507440 were not of a nature to warrant issuance of a preliminary injunction, and failed to fairly state the petitioner's case to the court, material grounds for the motion appear in connection with the representations made regarding patent No. 1630812.

In his affidavit, Mr. Keen said (Record, p. 39):

> "Referring to claims 1, 2 and 3 of Smith's patent No. 1630812, I testify that the conveyor or traction car used at the Magic City Kennel Club is identical with traction car described and claimed by Smith in claims 1, 2 and 3 and is a copy of that claim or claims, namely * * *."

Mr. Keen then recited the three claims of patent No. 1630812, *except* that in each of claims 1 and 2, he omitted words qualifying one of the material elements, in claim 3 omitted the qualifying words omitted from claims 1 and 2, and, in two instances, changed other words to give the claim a meaning not intended by the claim.

The words omitted from claim 1 (Record, p. 170) are "on said support and" following the word "guides" in line 9 of the claim.

The words omitted from claim 2 are "and being provided with adjusting means" following the words "cross bar" in line 9 of the claim.

The words omitted from claim 3 are "on said support and," following the word "guides" in line 10; one of the changes made in the wording of claim 3 was to substitute "cross bar" for "side frame" in line 12 of the claim and "vertically" for "transversely" in line 14 of the claim.

The above omissions may be explained in three different ways:

First: Assuming that the affiant intended to copy the claims of the patent, then the omission may have been a clerical error.

Second: Assuming that it was the intention of the affiant that the description which appears in the wording of claims 1, 2 and 3 of the patent is descriptive of respondents' structure rather than a recitation of the claims of the patent, then the omission is an *admission* that in respondents' structure there are no guides on the pivoting axle support as recited in claim 1 of the patent; that respondents' structure does not include bolts *provided with adjusting means* for mounting the springs whereby the pivoting support is normally held at right angles to direction of travel of the car; that any elements answering to the term "guides" which the affiant found in respondents' structure engaged the cross bar instead of the frame as recited in claims 1 and 3, and that any bolts which the affiant found in respondents' structure passed vertically through the cross bar instead of transversely therethrough as recited in claim 3.

Third: Or the affiant, having carefully inspected respondents' structure, as stated in his affidavit, and

finding that it did not include guides "on said support" arranged to engage the "side frame" or bolts "provided with adjusting means," or that the bolts as found in respondents' structure were arranged transversely through the cross bar, reconstructed the claims so that they might read on what he actually found in respondents' structure.

Whichever explanation fits the case there was misrepresentation of the actual facts.

The omissions and changes could hardly be accounted for on the ground of clerical errors for the reason that the same omissions and changes appear in the same recitations in the affidavit made by petitioner's other expert witness, Clement O. Gittinger (Record, pp. 32, 33).

If the recitation in the wording of the claims was what the affiant found by careful inspection of respondents' structure, it is a clear admission that respondents' structure does not include every element of each of the claims of the patents, and therefore, is not an infringement of any of the claims.

If the omissions and changes were made intentionally for the purpose of altering the claims so that they might read on respondents' structure, then there was such a clear misrepresentation of fact as to amount to fraud.

It is inconceivable that the court would have granted the injunction or the order requiring bond of the respondents knowing that the affidavits contained either of the errors above recited.

If the court had known that the errors were merely clerical then a correction would have been permitted in order that the petitioner might truthfully recite the actual conditions.

If the court had known that the affiant intended merely to recite what he found in respondents' structure,

then he would have listened to and considered the affiant's explanation of the dissimilarities and, if convinced that respondents' structure did not depart substantially from that recited in the claims, may have properly granted the injunction on the theory that respondents' different structure was the equivalent of that claimed in the patents.

If the court had known that the omissions and changes had not been made through carelessness, but intentionally, in order that they might apply to respondents' actual construction, then, of course, the order would not have been granted.

In any event the court was entitled to know just what the claims were and of what respondents' structure actually consisted. Any discrepancy in statement of the claims or of respondents' structure is sufficient to raise a doubt of infringement, of scope of the claims, and of the affiant's motive inconsistent with the certainty required as a condition precedent to the grant of such an extraordinary remedy.

There is nothing on the face of the patent to show whether the claims were granted as originally presented to the Patent Office, and therefore, presumptively entitled to broad interpretation, or if the limitations constituting the parts of the claim omitted from or changed in the affiant's recitation were required to be inserted before the claims could be secured, and therefore, constituting essential and vital elements of the claims.

Any uncertainty as to the materiality of the limitations could have been removed by the affiant by reference to the history of the application for the patent. If the limitations were not material this would have appeared in the history. On the other hand if the limitations were imposed on the claims for the purpose of overcoming the

prior art, and therefore, material or vital elements, then this would also have appeared in the history.

In *Reed Manufacturing Co.* v. *Smith & Winchester Company et al.*, 107 Fed. Rep. 719, 720, LaCombe, speaking for the Circuit Court of Appeals for the 2nd Circuit, held:

> "It is quite manifest that there is presented a substantial question as to infringement, which can be settled only upon construction of the patent, and that requires a presentation of the state of the art and a history of the invention in the Patent Office. The case would seem to be one in which preliminary injunction should not be granted without proof of prior adjudication."

While some of the matters complained of by the respondents may be explained and excused on the ground of clerical error, different intent or different view points, it is hard to conceive how either explanation can excuse the petitioner's misrepresentation of the adjudication of the patents in suit.

In his affidavit accompanying the motion for preliminary injunction, Mr. Keen said (Record, p. 40):

> "Affiant further states that he has inspected and observed the housing, conveyor car and dog racing device at Heinemann Park, New Orleans, constructed by or through one G. W. Heintz, one of the defendants in the case entitled *Smith* v. *American Electric Rabbit Racing Association*, and G. W. Heintz operating under the name of American Electric Rabbit Racing Association and New Orleans Kennel Club in the United States District Court for the Eastern District of Louisiana. That affiant testified in that case as a witness first by affidavit on application for preliminary injunction which was issued against said Heintz and secondly as a witness on the merits

> of that case wherein a permanent injunction was issued against said Heintz. Affiant further states that there is no difference between the devices, such as the housing, the conveyor car, and dog racing device covered by patents 1379224, 1507440 and 1630812 found as an infringement in the New Orleans case and the housing, the conveyor car and dog racing device he has observed and examined at Magic City Kennel Club."

The above statement includes a misrepresentation which is alone sufficient to require discharge of the order and bond.

The misrepresentation is that patent No. 1630812 in the suit at bar was adjudicated and held to be infringed in the suit of *Smith* v. *American Electric Rabbit Racing Association et al.* Patent No. 1630812 was *not* either adjudicated valid or held to be infringed in the decided case. It was not involved in the case. It may have been one of the six patents originally included in the suit, but if so, was withdrawn and was not considered or even discussed in the decision in the case. Judge Burns, in deciding the case, held (21 Fed. Rep. [2d.] 367):

> "Smith first claimed infringement of six patents on dog racing devices, but withdrew three, leaving three at issue, viz.: Patent No. 1379224, which is general in its scope and covers the lure conveyor arm which projects horizontally from the rail track through a continuous opening in the side of the conveyor housing; No. 1507439, which covers the starting cage, and No. 1507440, which covers the housing or casing over the conveyor rail track."

Consequently, there had been no adjudication of either validity or infringement of patent No. 1630812 such as the law requires as a basis for a preliminary injunction

or the substitute relief granted by the order and bond, and the order and bond having been made and required under a misapprehension, due to the petitioner's misrepresentations of facts, should be vacated and discharged, regardless of other issues of the case.

Ironclad Mfg. Co. v. *Sugar Loaf Dairy Co. et al.*, 140 Fed. Rep. 108, 109.

Republic Electric Co., Inc., et al. v. *General Electric Co.*, (C. C. A. 3d. Cir.) 27 Fed. Rep. (2d) 595, 597.

CONFLICT OF DECISIONS.

Conflict of the decisions between the Fifth and Tenth Circuits arose through the different conclusions of the respective courts as to the range of equivalency to which the patents are entitled.

The Court of Appeals of the Fifth Circuit by adopting the opinion of Judge Burns of the trial court held (21 Fed. Rep. [2d] 366, 371) that while Smith

> "was only an improver and not a pioneer or primary inventor * * * There is nothing to show his intention to relinquish to the public all forms in which his invention might be embodied."

That, on this theory (21 Fed. Rep. (2d) 366, 369):

> "The question presented is whether the defendants actually omit an element of Smith's patent, which is a combination patent of elements all known to the prior art, and thereby avoid infringement; or do they merely transpose one element, viz., by merely changing the location of the conveyer, rail, track, and housing from the outer to the inner side of the race course, and substituting for the arm-supporting wheel and hinge a known mechanical equivalent by rigidly attaching the projecting lure-carrying arm to the conveyer car."

That with this understanding of the status of the inventor, and of the question understood to be presented, its conclusions were (21 Fed. Rep. [2d] 366, 371):

> "In the instant case, the defendants admit a substantial copying of all of Smith's combination except for the alleged omission of the hinge and wheel."

That comparing the patented with the accused structure the court found (21 Fed. Rep. (2d) 366, 371, 372):

> "As I appreciate the mechanical values here, the lateral horizontaliy inclined lure-supporting arm performed the same function in both cases, each in the same way. The rotatably mounted wheel at the outer end was the mere complement of the hinge on the conveyer at the other. Omitting the hinge, the wheel was unnecessary. Adopting rigidly at the inner end of the arm by omitting the hinge was a mere formal alteration."
>
> * * * * * * * *
>
> "The element of novelty in Smith consisted of the lateral or horizontal arm projected out of the continuous opening of the housing. I repeat, it was this idea that made the combination successful. It was the difference between Smith's success and the failure of his predecessors. It was then easy for a skilled mechanic to substitute a known equivalent for an omitted element when attempting to evade a charge of infringement."

As authority for such conclusion Judge Burns relied on *Rees* v. *Gould*, 15 Wall. (82 U. S.) 187, 21 L. Ed. 39, and *Machine Co.* v. *Murphy*, 97 U. S. 120, 125, 24 L. Ed. 935, for his findings that (21 Fed. Rep. (2d) 366, 370):

> "withdrawal of one ingredient in a patent combination and the substitution of another, which was well known at the date of the patent as a proper substitute for the one withdrawn, is a mere formal alteration of the combination, and if the ingredient substituted performs substantially the same function, such a substitution of the one for the other will not avoid the charge of infringement."

> plaintiff's claims are broad enough to exclude the world from the use of the horizontal arm. It is academic that the right of a patentee is measured by the claims allowed, and not what might have been allowed. Smith was not allowed a claim covering in terms this single idea of an horizontal arm. He claimed, and was allowed, a combination of various elements."

After careful analysis of the File Wrapper and Contents of patent No. 1379224, and comparison of the claims of the patent with respondents' structure as disclosed by the evidence, the Court of Appeals of the Tenth Circuit held (38 Fed. Rep. (2d) 170, 173):

> "The question is undoubtedly a close one, but considering that the art of mechanical dog racing is not new, that the patentee was not a pioneer in the field, and the substantial functions performed by the wheel and hinge not served by the rigid arm, we are of the opinion that the law laid down in *I. T. S. Rubber Co. v. Essex Rubber Co.*, 272 U. S. 429, 444, 47 S. Ct. 130, 141, 71 L. Ed. 335, is applicable, that 'if the claim to a combination be restricted to specified elements, all must be regarded as material.'"

Stating its understanding of the scope to which patent No. 1507440 was entitled the Court of Appeals of the Tenth Circuit, after expressing doubt as to validity of the patent, found on the question of scope and infringement (38 Fed. Rep. (2d) 170, 173-174):

> "Patentability of this device, if it exists at all, must depend upon the truss rod support or the adjustable stay rods, neither of which defendants use. Defendants' housing is but a box, with a slot next to the roof on one side; the roof is supported by a

> cleat nailed between the closed side and the timbers of the roof extended, which plaintiff calls a 'truss'; perhaps it is, but plaintiff has no monopoly on 'trusses' as such, and the defendants' cleat is at best no more than generically kin to plaintiff's rod."

and concluded:

> "If there is patentability disclosed herein, it must arise from the specific structure; the defendants' housing does not, in our opinion, fall within its necessarily narrow range of equivalency. Accordingly there is no infringement."

It is submitted that the conclusions of the Circuit Court of Appeals of the Tenth Circuit, following the law laid down by the Supreme Court in the cases of *I. T. S. Rubber Co. v. Essex Rubber Company*, 272 U. S. 429, and *Weber Electric Co. v. Freeman Electric Co.*, 216 U. S. 668, and of other authorities cited on pages 4 to 6 of respondents' brief, disclose sounder reasoning and application of the law to the facts herein involved, and that agreement of the Circuit Court of Appeals of the Sixth Circuit with the conclusions reached by that of the Tenth Circuit is highly persuasive of the correctness of the conclusions reached by the Circuit Court of Appeals of the Tenth Circuit.

CONCLUSION.

In conclusion, it is submitted, therefore, that the decision by the Circuit Court of Appeals of the Tenth Circuit correctly fixes the scope of the patents in suit, and determines the question of infringement there involved, and should be affirmed.

Respectfully submitted,

ARTHUR C. BROWN,
Counsel for Respondents.

SUPREME COURT OF THE UNITED STATES.

No. 77.—October Term, 1930.

Hannah M. Smith, Administratrix of Estate of Owen P. Smith, deceased, Petitioner, *vs.* Magic City Kennel Club, Inc., and John J. Shaughnessy.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

[February 25, 1931.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

This suit was brought in the District Court of the United States for the Northern District of Oklahoma to enjoin the infringement of letters patent No. 1,379,224, May 24, 1921, and No. 1,507,440, September 2, 1924 (and also three other patents not here involved) issued to Owen P. Smith, the petitioner's intestate, for improvements in devices for dog races. A Special Master was appointed to hear and determine the issues. The Master reported that each of the patents was valid and infringed. The District Court approved the report, and entered a decree for injunction, and for recovery, upon a bond given under the order of the Court, of damages. This decree was reversed by the Circuit Court of Appeals for the Tenth Circuit. 38 F. (2d) 170. This decision was in conflict with that of the Circuit Court of Appeals for the Fifth Circuit in *American Electric Rabbit Racing Association* v. *Smith* (26 F. (2d) 1016) affirming, without discussion, the decree of the District Court for the Eastern District of Louisiana (21 F. (2d) 366) which held patents No. 1,379,224 and No. 1,507,440 to be valid and infringed. In view of this conflict, this Court granted a writ of certiorari in the instant case. 281 U. S. 714.

These patents were also before the District Court for the Southern District of Ohio, in *Smith* v. *Springdale Amusement Park*, where the bill of complaint was dismissed for want of infringement (39 F. (2d) 92) and the decree was affirmed by the Circuit

Court of Appeals for the Sixth Circuit, 40 F. (2d) 172; certiorari granted October 13, 1930, 282 U. S. —.

Patent No. 1,379,224. The claims in suit are numbers 1 and 2, as follows:

"1. In a dog racing amusement, a race course suited for dogs, a casing extending around the outer side of the race course and provided with a longitudinal opening, a mechanical conveyer including a track extending around the race course and located within the casing, and a conveyer car mechanically operated upon said track and provided with an arm extending through the longitudinal opening of the casing in a projecting position over the track and adapted to carry a lure, and a wheel rotatably mounted on and supporting the arm at the projecting end thereof.

"2. In an amusement, the combination of a race course suited for dogs, a covered rail track adjacent said course on one side, a conveyor car mechanically operated upon said track, a horizontally extending arm hinged to said car extending midway of said course, a wheel rotatably mounted near the end of said arm, and resting upon the ground, a platform supported by said arm and a lure or quarry mounted upon said platform for attracting the dogs."

The prior art shows various contrivances for carrying an artificial lure around a track in front of racing dogs. Hind, 1884 (British, No. 4274) described an inanimate lure moved by means of a rope traveling along a sunken trough. Pinard, 1887 (No. 362,396) proposed a lure-carrier dragged upon the ground by a cable winding upon a drum at the end of the track. Moss, 1896 (British, No. 9058) showed a device, on the order of an electric trolley system, with a rail laid on the race course. Walsh, 1898 (No. 611,876) placed his conveyor car adjacent to the track and separated from it by a fence, and provided an arm reaching over the fence and connected with another arm, pliant or stiff, which extended downward to the lure-carrying mat dragging on the ground. Smith, 1912 (No. 1,038,504) provided an underground track, within and beneath the race course, and a conveying mechanism hidden from view and carrying the lure which was visible above the ground. Everett, 1913 (No. 1,052,807) followed Smith, using an underground cable.

Smith, in the combination for which the patent in suit (No. 1,379,224) was issued, placed his covered rail track adjacent to the race course, and he connected the cooperating elements of conveyor car and lure by an arm horizontally extending over the

course. The distinctive feature of his invention is set forth in claim 1 as "an arm extending through the longitudinal opening of the casing in a projecting position over the track and adapted to carry a lure, and a wheel rotatably mounted on and supporting the arm at the projecting end thereof"; and, in claim 2, as "a horizontally extending arm hinged to said car extending midway of said course, a wheel rotatably mounted near the end of said arm, and resting upon the ground, a platform supported by said arm and a lure or quarry mounted upon said platform for attracting the dogs."

The petitioner asserts that by his apparatus, Smith surmounted the difficulties encountered in the impracticable devices of the prior art and led to commercial success. The Circuit Court of Appeals in the instant case, while finding that there was no infringement, had no doubt that Smith's device was an improvement over the prior art and assumed that it was patentable (38 Fed. (2d) at p. 171). We make the same assumption. Smith's improvement, however, was in a limited field. There was manifestly no invention in a combination consisting of a rail track, with a casing adjacent to the course, a conveyor car, and an arm projecting over the course and connected with a mechanical lure carried in advance of racing dogs. Patentability could be predicated of Smith's improvement, only by reason of the distinctive feature of the arm which he employed.

The differences in the respondents' apparatus, which are urged as avoiding infringement, are that the respondents use a rigid horizontal arm, that it is not hinged to the car, that there is no wheel, and that the arm has no ground support at its free end; and, further, that the respondents have located their conveyor housing on the inner side of the race course, while claim 1 of the patent puts the casing on the outer side. We may at once dispose of the latter point, as we find no basis for the conclusion that the invention of the patent is limited to a location of the casing on the outer side of the course. There is no such limitation in claim 2. The important question is whether the patent covers a rigid horizontal lure-carrying arm without ground support.

It appears from the file wrapper that in the application, which resulted in patent No. 1,379,224, Smith made, among others, the following claim:

"3. In an amusement, the combination of a race track suited for dogs, a covered rail track adjacent said course, a conveyor car mechanically operated upon said track, an arm attached to said car extending midway of said course, a wheel rotatably mounted on said arm and a lure mounted on said arm".

This claim was rejected on the prior patent to Walsh (No. 611,876). Another claim (then numbered 4) was allowed as originally presented, and is claim 2 of the patent. Smith did not contest the rejection of original claim 3, above mentioned, but proposed an amendment which related to the casing. This amendment was rejected "on either Walsh or Moss", the examiner stating "that Moss is provided with a housing and it would not be invention to provide Walsh with one." Without further contest, Smith then canceled the rejected claim 3 and substituted what is now claim 1 of the patent. On comparing the claim as thus allowed and the rejected claim, it appears that the important difference was that instead of claiming "an arm attached to said car extending midway of said course, a wheel rotatably mounted on said arm, and a lure mounted on said arm", the claim was made to read "an arm extending through the longitudinal opening of the casing in a projecting position over the track and adapted to carry a lure, and a wheel rotatably mounted on and supporting the arm at the projecting end thereof."

The petitioner insists that the gist of Smith's invention was "the straight out lure-carrying arm laterally extending and operating exclusively in a substantially horizontal plane." But it will be observed that the rejected and abandoned claim was the broad one of "an arm attached to said car extending midway of said course," and that the new claim, as proposed and allowed, did not specify a horizontal arm alone. The essential difference in the allowed claim lay in the specification of the wheel "as supporting the arm at the projecting end thereof." Claim 2 (original claim 4), which was allowed without question, specified a horizontal arm hinged to the car and resting on a wheel. A rigid, horizontal arm, without hinge or wheel, was not the subject of either claim.

The case, in our opinion, thus calls for the application of the principle that where an applicant for a patent to cover a new combination is compelled by the rejection of his application by the Patent Office to narrow his claim by the introduction of a new

element, he cannot after the issue of the patent broaden his claim by dropping the element which he was compelled to include in order to secure his patent. *Shepard* v. *Carrigan*, 116 U. S. 593, 597. As this Court said in *I. T. S. Rubber Company* v. *Essex Rubber Company*, 272 U. S. 429, 443: "If dissatisfied with the rejection he should pursue his remedy by appeal; and where, in order to get his patent, he accepts one with a narrower claim, he is bound by it. *Shepard* v. *Carrigan*, *supra*, 597; *Hubbell* v. *United States*, 179 U. S. 77, 83. Whether the examiner was right or wrong in rejecting the original claim, the court is not to inquire. *Hubbell* v. *United States*, *supra*, 83. The applicant having limited his claim by amendment and accepted a patent, brings himself within the rules that if the claim to a combination be restricted to specified elements, all must be regarded as material, and that limitations imposed by the inventor, especially such as were introduced into an application after it had been persistently rejected, must be strictly construed against the inventor and looked upon as disclaimers. *Sargent* v. *Hall Safe & Lock Company*, 114 U. S. 366; *Shepard* v. *Carrigan*, *supra*, 598; *Hubbell* v. *United States*, *supra*, 85. The patentee is thereafter estopped to claim the benefit of his rejected claim or such a construction of his amended claim as would be equivalent thereto. *Morgan Envelope Company* v. *Albany Paper Company*, 152 U. S. 425, 429".

The petitioner resorts to the doctrine of equivalents, insisting that the rigid horizontal arm of the respondents is to be treated as the equivalent of the arm of the patent, and that the limiting specifications of the claims may be ignored. What has already been said disposes of this contention, for where a patentee has narrowed his claim, in order to escape rejection, he may not "by resort to the doctrine of equivalents, give to the claim the larger scope which it might have had without the amendments which amount to disclaimer." *Weber Electric Company* v. *Freeman Electric Company*, 256 U. S. 668, 677, 678; *I. T. S. Rubber Company* v. *Essex Rubber Company*, *supra*. It should also be observed that the difference here was both in structure and in mode of operation and result. Petitioner's witness testified that Smith "built cars with rigid arms and had the arms snap off", and "that is why he went to the wheel and hinge. It reduces the friction there, I guess you would call it, crystallizing the arm from the

vibration. If the arm was at the end and no wheel to support it, it would naturally drag on the track." Respondents' witness testified that the difference in the arm they used, which does not include the wheel for supporting the arm, is that when the arm "has a wheel under the end as it runs over the track, it doesn't have any vibration"; that vibration makes the lure "jump up and down" giving it a more lifelike appearance.

We agree with the decision of the Circuit Court of Appeals that infringement of letters patent No. 1,379,224, was not established.

Patent No. 1,507,440. This patent is for "Housing for Conveyor Cars and Tracks". It relates to the casing element called for by patent No. 1,379,224. The claims as originally presented were rejected "as indefinite and as aggregations". Other claims were substituted, which included claim 1 of the patent, as allowed, as follows:

"1. In a housing for covering tracks and cars having laterally extending arm operated upon said track, the combination of posts set in the ground at the sides of said track, timbers attached to said posts to form a frame, and boards attached to said timbers and posts to form a continuous enclosure above said track, and having a continuous opening in one side of said housing adapted to permit extension of the laterally extending arm, therethrough, and truss rods attached to the closed side of the housing adapted to support the side of said housing above the said continuous opening".

All the elements in this claim were old. So far as the continuous opening "adapted to permit extension of the laterally extended arm" is concerned, there was anticipation by Bertram, 1903, No. 729,120, whose housing for a third or electric rail disclosed a similar method of contact with an outside track, in providing for a casing (enclosing the electric rail) "in which is formed a longitudinal slot or opening". A comparison of claim 1 of the patent with the other claims which were rejected and canceled, shows that the distinctive features of the claim allowed were that the opening was placed "in one side of said housing" and that there was a specification of a particular sort of support, that is, "truss rods attached to the closed side of the housing". In other claims allowed, the reference is to "adjustable stay rods".

The Circuit Court of Appeals for the Tenth Circuit, in the instant case, questioned the patentability of the device and said that if patentability existed at all, it must depend upon the truss rod support or the adjustable stay rods, neither of which the respondents use. We agree with this statement, and we are also of the opinion, as was the Circuit Court of Appeals for the Sixth Circuit, (*Smith* v. *Springdale Amusement Park*, *supra*), that supplying the feature of the truss rods and the adjustable stay rods did not constitute invention. To provide such supports would be but a step obvious to any skilled mechanic. *Atlantic Works* v. *Brady*, 107 U. S. 192, 200; *Railroad Supply Company* v. *Elyria Iron & Steel Company*, 244 U. S. 285, 292; *Powers Kennedy Contracting Corporation* v. *Concrete Mixing Conveying Company*, 282 U. S. 175, 186.

Decree affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.